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IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT of 2017

Re: Proposed acquisition of Tatts Group Limited by Tabcorp Holdings Limited

Tabcorp Holdings Limited (Applicant)

Statement of: **Dr Christopher Pleatsikas**

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Date: 8 March 2017

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Filed on behalf of Tabcorp Holdings Limited (Applicant)

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Expert Economic Report of Dr Christopher Pleatsikas

I. Background and Qualifications

1. I, Christopher Jon Pleatsikas, am an economist, living in Berkeley, California. I am a Vice President at Charles River Associates, an international economic, litigation support services and business strategy consulting firm, headquartered in Boston, Massachusetts. In the past I was co-Director of the firm's Asia-Pacific Competition Practice, based in Sydney.
2. I have been a Managing Director at the Berkeley Research Group and at LECG, LLC, both global economics and business strategy consulting firms. I have also been a Principal at Putnam, Hayes & Bartlett (now part of PA Consulting) and a Manager of the Economic Analysis Unit at Price Waterhouse (now part of PricewaterhouseCoopers). I have also been a Distinguished Lecturer/Lecturer in the Economics Department of the University of California, Santa Cruz.
3. I received a B.A. from the University of Pennsylvania, as well as an M.S. in Natural Resources from the University of Vermont and a Ph.D. in Regional Economic Analysis from the University of Pennsylvania. In addition to teaching industrial organization (competition economics) at the University of California, I have taught economics and quantitative methods at both the University of Pennsylvania and the University of Maryland.
4. My particular areas of expertise are industrial organisation, competition policy, damages analysis, regulation, and microeconomics. I have extensive experience in Australia, as well as in New Zealand, the United States and Europe, in competition (antitrust) analysis and litigation as well as in other litigation and strategic consulting assignments concerning damages analysis, intellectual property matters, contractual matters and contract disputes.
5. I have worked in a wide variety of industries in my career, including high technology industries, consumer products industries and the energy industry. I have also worked in the wagering/gambling industry, including in Australia. In this industry I have worked on license extensions, mergers and acquisitions and economic impact analysis.

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6. More generally, my experience in antitrust analysis includes a wide range of matters, including (but not limited to) mergers and acquisitions, as well as allegations of monopolisation and attempted monopolisation, predatory pricing, raising rivals' costs, price fixing and many other subject matters. I also have considerable experience in economic impact analysis, including experience in constructing and applying economic impact models designed to estimate the regional economic impacts of industrial and economic activity.
7. I have testified before and submitted testimony to the Australian Federal Court and the Australian Competition Tribunal, as well as the Australian Copyright Tribunal, state and federal courts in the United States and courts in New Zealand and the Republic of Singapore. I have also testified under Australian Federal Court rules in several private arbitrations in Australia. I have been engaged by private clients and by antitrust regulators, including the Australian Competition and Consumer Commission.
8. I have authored and co-authored a number of papers. For example, I have authored and/or co-authored articles on market definition, on the competitive effects of long-term contracts, on predatory pricing and on the problems encountered in competition analysis. I am also editor of the "Report from North America," a column on antitrust developments published regularly in the *Australian Journal of Competition and Consumer Law*.
9. I have read, understood and complied with the Federal Court of Australia General Practice Note GPN-EXPT (Expert Evidence), "Harmonised Expert Witness Code of Conduct." My opinions are based wholly on the specialised knowledge I have gained through my education and experience and the analysis of the assumptions I have been provided. I have been assisted in the preparation of this Report by Dr Andy Baziliauskas (who has a Ph.D. in Economics from the University of Western Ontario and specialises in competition economics) and by research staff at Charles River Associates. I discussed with Dr Baziliauskas some aspects of my welfare calculations and welfare calculation methods. The research staff provided auditing support and assisted in collecting relevant literature for my Report. All the opinions expressed in this document are mine and mine alone, however.

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10. My Expert Report is organised as follows. Section II presents my assignment, while Section III provides a summary of my conclusions. Sections IV and V present my analysis in relation to the questions I have been asked.

II. Assignment

11. I have been asked by Herbert Smith Freehills, solicitors for Tabcorp to answer the following questions:
- (a) **Question a:** As a matter of economic theory, what are the relevant effects to consider when assessing the economic impact of a merger or acquisition?
 - (b) **Question b:** What are the economic principles and methodologies relevant to:
 - i. **Question b(1):** defining the relevant market or markets for the purpose of analysing the competitive effects of Tabcorp's proposed merger with Tatts (the **proposed merger**)?
 - ii. **Question b(2):** assessing the competitive effects of the proposed merger?
 - iii. **Question b(3):** assessing the effect of the proposed merger on total economic welfare?
 - (c) **Question c:** What are:
 - i. **Question c(1):** the dimensions, and hence the definition, of the relevant market or markets that would be relevant to analysing the competitive effects of the proposed merger?
 - ii. **Question c(2):** the likely competitive effects of the proposed merger?
 - iii. **Question c(3):** the likely effects of the proposed merger on total economic welfare?
12. The answers to Questions a and b are presented in Section IV. The answers to Question c is presented in Section V.
13. Exhibited to me at the time of signing this report and marked "Exhibit CP-1" is a bundle of documents. Exhibited to me at the time of signing this report is one further bundle of documents marked "Confidential Exhibit CP-2". Where in this report I refer to tabs in CP-1 or CP-2, I am referring to the tabs of Exhibit CP-1 and Confidential Exhibit CP-2 respectively. I also refer to documents by reference to their unique document number beginning with a "TBP" prefix. I have reviewed the documents I

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have referred to prior to signing this report. I understand that Tabcorp and Tatts claim confidentiality over Confidential Exhibit FM-2.

14. My curriculum vitae is included at **Tab 1** of **CP-1 [TBP.001.027.6266]**. My initial Engagement Letter of 1 December 2016 is included at **Tab 2** of **CP-1 [TBP.001.027.5174]**. Appended to this Engagement Letter is the Federal Court Harmonised Expert Witness Code of Conduct. A copy of the Federal Court General Practice Note GPN-EXPT (Expert Evidence) is at **Tab 3** of **CP-1 [TBP.001.027.2039]**. The Letter of Instructions is included at **Tab 4** of **CP-1 [TBP.001.029.0001]**. This Letter of Instructions includes the questions that I have been asked to address. The assumptions that I have been asked to make are included at **Tab 1** of **CP-2 [TBP.001.027.1829]**, save that the confidentiality markings in the version included have been updated. Supplementary documents to which I have also been asked to have regard are :
- (a) an **[Confidential to Tabcorp]** Excel Spreadsheet containing wagering and turnover data for FY06-FY16 (**Tab 2** of **CP-2 [TBP.001.018.5686]**);
 - (b) an **[Highly Confidential to Tabcorp]** Excel Spreadsheet containing Tabcorp phone and online betting account data (**Tab 3** of **CP-2 [TBP.001.022.0002]**);
 - (c) an **[Highly Confidential to Tatts]** Excel Spreadsheet titled “Tatts Digital and Telephone Wagering Turnover FY12 to FY16” (**Tab 4** of **CP-2 [TBP.001.027.2115]**);
 - (d) the Tabcorp ASX Release regarding the proposed merger with Tatts Group Holdings dated 19 October 2016 (**Tab 5** of **CP-1 [TBP.011.001.0110]**);
 - (e) a presentation released to the ASX dated 19 October 2016 (**Tab 6** of **CP-1 [TBP.006.001.0121]**); and
 - (f) the Merger Implementation Deed between Tabcorp and Tatts (**Tab 7** of **CP-1 [TBP.004.011.0610]**).

III. Summary of Conclusions

15. My main conclusions are summarised below:
- (a) **Question a:** As a matter of economic theory, what are the relevant effects to consider when assessing the economic impact of a merger or acquisition?

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- i. In terms of measures of efficiency, the relevant effects to consider are the impacts on prices, output and costs, both in the short run and the long run.
 - ii. One should also consider whether and to what extent competitive alternatives exist, including competition and potential competition from entry.
 - iii. Measurement of other indicators of economic benefit may also be relevant to assessing the economic impact of a proposed acquisition. These may include impacts on international competitiveness, export earnings, employment and fostering the growth in related economic activity.
- (b) **Question b(1):** What are the economic principles and methodologies relevant to defining the relevant market or markets for the purpose of analysing the competitive effects of Tabcorp's proposed merger with Tatts (the **proposed merger**)?
- i. Markets are defined based on the concept of close substitutability. The conceptual test used is the hypothetical monopolist test.
 - ii. Markets are defined with respect to product, geographic and functional boundaries and sometimes with respect to temporal and customer (price discrimination) considerations.
- (c) **Question b(2):** What are the economic principles and methodologies relevant to assessing the competitive effects of the proposed merger?
- i. One key element in any assessment of the competitive effects of any merger is the concept of economic efficiency. Economic efficiency is a measure of economic performance.
 - ii. Efficiency is measured as the sum of producer surplus – the amount by which the price received by suppliers exceeds the marginal costs they incur – and consumer surplus – the difference (summed over all consumers) between the amount consumers are willing to pay for a product and the price that they have to pay. Mergers can affect both the amount of consumer surplus and the amount of producer surplus, as well as the relative proportions each represent of total surplus.
 - iii. In addition to total surplus, there are other useful measures that can be utilised to evaluate the competitive effects of mergers. These include impacts on output and prices, assessments of the number and significance of actual and potential competitors, employment impacts, impacts on national income, impacts on the financial viability of the industry in question and related issues and other sector-specific and context-specific factors.

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- iv. Both quantitative and qualitative methods are used for assessing the competitive impact of proposed mergers.
 - v. It is appropriate to evaluate higher-order effects of proposed acquisitions, as first-order effects will generally not provide a complete view of effects.
- (d) **Question b(3):** What are the economic principles and methodologies relevant to assessing the effect of the proposed merger on total economic welfare?
- i. There is debate over whether consumer surplus or total surplus is the appropriate standard to use in order to evaluate the potential benefits or detriments of a proposed merger, but, where the objective is increases in total efficiency, total surplus – the sum of consumer surplus and producer surplus – is the appropriate measure. In addition, the fact that, in this case, certain indirect (or second-order) effects are important, tends to support use of a total surplus standard.
- (e) **Question c(1):** What are the dimensions, and hence the definition, of the relevant market or markets that would be relevant to analysing the competitive effects of the proposed merger?
- i. For the purpose of assessing the competitive effects of the proposed acquisition of Tatts by Tabcorp, there are three separate relevant product markets for gambling entertainment products offered to consumers that enable those consumers to place bets on outcomes. The first product market is the (at least) national market for wagering products. The second product market is the national market for lottery products. The third set of product markets are the state-based markets for keno products. The functional level for each of these product markets is the supply of products to end consumers. It is possible that the wagering market could be further subdivided into an international wagering market for large punters (those who wager **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED]) and a national (or possibly broader) wagering market for all other punters. The information provided to me is not definitive on this issue, however.
 - ii. In addition to these markets, the market (or markets) for the supply of ancillary electronic gaming machine services (excluding the manufacturing of EGM equipment) to gaming venues is (are) relevant market(s) of interest. It is unclear based on the information provided whether this market should be defined based on individual ancillary electronic gaming machine services, subsets of ancillary electronic gaming machine services or all ancillary electronic gaming machine services combined, although there is some information that is consistent with

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defining separate, state-based markets for LMO services. Therefore, it may be useful to assess competitive effects using both narrow and broad market definitions.

- iii. Finally, there are two types of broadcasting markets that are relevant to assessing the competitive effects of the proposed acquisition. These are the national market for television broadcasting to end consumers and the state or sub-state markets for radio broadcasting to end users.
- iv. Licensing transactions represent an important input for gambling entertainment products and ancillary electronic gaming machine services. There are two types of licences – exclusive/near-exclusive licences and non-exclusive licences. In relation to gambling entertainment products, exclusive/near-exclusive licences and non-exclusive licences are at least partial substitutes. Moreover, the value of exclusive/near-exclusive licences depends on overall market competition for these products. Therefore, it is most appropriate, for the purposes of evaluating the public benefits of the proposed merger, to analyse licensing transactions within the context of the gambling entertainment markets.

(f) **Question c(2):** What are the likely competitive effects of the proposed merger?

- i. The trends in the wagering market – both in the market overall, such as the shift toward corporate bookmakers, the shift to online products and the shift toward fixed odds wagering – are consistent with the view that there would be no significant anticompetitive effects and no net negative public benefits from the proposed acquisition on the national wagering market. Even if separate price discrimination markets for wagering by large punters and wagering by other punters could be supported, there is a sound economic basis to support the view that there would be no significant impact on competition in either of these markets.
- ii. Tabcorp and Tatts do not compete in the lottery market, as Tabcorp does not supply lottery products. Furthermore, bidding for lottery licences has been competitive in the past and multiple firms would continue to constitute viable suppliers of these services in both the factual and the counterfactual. This is consistent with the view that there would be no adverse competitive impact in the lottery market.
- iii. The number of current market participants, the number and significance of potential market participants, the long-term nature of most of the state keno licences and state control over the licensing process suggests that the proposed acquisition would not have a significant impact on competition and would not result in net negative public benefits. The competition in

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keno products from Lottoland and Plus Connect would also support this conclusion, although the competitive significance of these firms is not clear at this time.

- iv. As to the impact of the proposed merger on licensing transactions in the relevant gambling entertainment product markets and the ancillary electronic gaming machine market(s), there appears to be no significant flow-on impact on the number of licences awarded or on the economic activity of the licensees (no output effect), nor would there be a likely effect on the maximum licence fees (price effect). Moreover, the proposed merger would not have any impact on the height of barriers to entry relating to licensing. As to the impact of the proposed merger on licensing fees, any potential impact of the proposed merger on transactions for exclusive and near-exclusive State gambling entertainment product licences would, in most cases, not be possible for decades. In addition, the countervailing power of the States, which issue licences and control the licensing process, and the existence of significant alternative potential bidders would each likely substantially ameliorate and/or eliminate entirely any possible negative competitive impacts of the proposed merger on these licensing input transactions. Finally, the value of licences to licensees is affected by competition from other suppliers of gambling entertainment products. This competition, too, would tend to ameliorate and/or eliminate any possible negative competitive impacts of the proposed merger on these licensing input transactions.
- v. No matter whether there is one overall relevant market for all electronic gaming machine ancillary services or there are several markets for these services defined according to the different services provided, it is unlikely that that the proposed merger will result in any significant competitive detriment.
- vi. Two types of broadcasting services markets are implicated by the proposed merger – radio and television. Two facts render any significant competitive impact in these markets unlikely. First, Tabcorp and Tatts do not compete with one another in any relevant broadcasting market. Second, there are several potential competitors in both types of markets that could offer to compete if the merged entity were to offer subcompetitive prices for the relevant broadcast rights.

(g) **Question c(3):** What are the likely effects of the proposed merger on total economic welfare?

- i. The welfare effects of the proposed merger as measured by the increase in merger-specific synergies (i.e., efficiency improvements), increases in

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payments to the racing industry and other sports bodies, increases in tax payments, increases in wagering activities and higher-order (indirect) employment and business benefits are significantly positive. For example, the present value merger-specific synergies for the parties to the proposed merger in wagering alone are at least **[Confidential to Tapcorp]** [REDACTED], with present value of the additional payments to the NSW and Victoria racing industry bodies more than **[Confidential to Tapcorp]** [REDACTED]. Given that there are unlikely to be any significant adverse competitive consequences from the proposed merger, in my opinion the public benefits of the proposed merger should be positive.

16. I elaborate on these conclusions and my reasons for them in the Sections that follow.

IV. Economic Theory and Principles and Methods for Competition Analysis

17. In Sections IV.1 through IV.3 below I discuss the economic theory and principles relating to the concepts of competition, market power, market definition and the assessment of competitive effects. In Section IV.4 I briefly discuss use of the total efficiency versus consumer welfare standard to measure the effects of mergers and acquisitions as well as other measures that may be useful in assessing the competitive impacts of mergers. In all cases the discussion herein is presented from purely an economic perspective. Section IV.1 provides a general backdrop for the economic concepts and principles relevant to answering Questions b(1) through b(3), which are answered in Sections IV.2 through IV.4. Section IV.5 provides the answer to Question a.

IV.1 Definition and Nature of Competition

18. Because “competition” is such an important consideration in antitrust cases, it is appropriate to examine the concept from an economic standpoint. The concept is fundamentally rooted in the notion of rivalry between economic entities in their efforts to obtain and retain consumers.¹ Competition is not an economic abstraction but rather the process of continuous vying for consumers. It is driven by the profit motive and

¹ Competition takes place within a market. A relevant antitrust market is best regarded as a set of competitive constraints on the ability of a single firm (or a group of firms) profitably to raise the price above some benchmark level for a significant period of time.

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entrepreneurial incentives. In competitive markets, firms have strong incentives to offer products and services that match consumers' preferences and, in order to stay competitive, ensure efficient production and responsive innovation.²

19. Economists often utilise structural descriptions of the relevant market to gauge the extent of likely competition within the market and the ability of a single firm (or a group of firms) to exercise “market power”. For example, in a perfectly competitive market, there are many sellers, each lacking the ability to influence price through its actions and thus lacking market power.³ Such firms are forced to sell their products at “marginal cost.”⁴ By contrast, in a classic monopoly market, there is only one seller, usually with significant discretion over price. In the context of competition analysis, economists tend to use the terms “monopoly power” and “significant or substantial market power”⁵ interchangeably to indicate that a firm has no significant competitive constraints on its pricing discretion.⁶ Therefore, in such a context, a firm need not be a classical monopolist in the sense that it has no competitors at all. Rather, it need only be a firm whose competitors impose no significant competitive constraints.
20. In between these extremes, there are various types of imperfectly competitive markets. In what are described as “oligopolistic markets”, there are few sellers of identical or

2 E.g., see, J. Ordover, "Economic Foundations of Competition Policy: A Review of Recent Contributions," in W. Comanor, et al., *Competition Policy in Europe and North America: Economic Issues and Institutions, Fundamentals of Pure and Applied Economics*, Vol. 43, Harwood Academic Publishers, 1990, pp. 7-42 and D. Carlton and J. Perloff, *Modern Industrial Organization*, 4th Edition, Pearson Addison-Wesley, Boston, 2005, especially Chapter 3.

3 The characteristics of the perfectly competitive market model are set forth in more detail, e.g., in D. Carlton and J. Perloff, op. cit., p.57ff. These include, inter alia, homogeneous goods and services, perfect information, price taking (i.e., any deviation from market price is unprofitable), free entry and exit, and the absence of scale and scope economies. It is readily apparent that such characteristics do not describe many real world markets.

4 The terms “marginal costs” and “incremental costs” are sometimes used interchangeably, but, in economic terms, they are not necessarily equivalent. The term “marginal costs”, in its strict economic meaning, essentially refers to the cost associated with producing one more unit of a good or service by a firm. The term “incremental costs” encompasses output changes of various magnitudes. It can refer to anything from the additional cost of producing a very small increment of output (i.e., “marginal cost”) to the costs associated with adding a whole new product line to the existing set of a firm’s offerings.

5 My use of the term “substantial market power” is meant to convey an economic view and indicates the situation in which a firm that possesses substantial market power faces no significant competitive constraint – that is, its competitors – actual or potential – do not significantly constrain its ability to set price or non-price terms for its products.

6 Economists generally discuss market power in terms of “pricing discretion”, but, in fact, market power provides discretion over quality-adjusted price and competition occurs in both price and non-price dimensions. In other words, when economists discuss “price competition,” they use the term as shorthand for price and quality competition. I adopt that shorthand convention in this document.

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differentiated products.⁷ In oligopolistic markets, firms are generally aware of their influence over price, are cognizant of their interdependence and can often earn rates of return that exceed “normal” levels.⁸ Some markets are best described as being “monopolistically competitive” (i.e., containing many sellers of differentiated products). Because monopolistically competitive firms sell differentiated products, they have some degree of market power and can charge prices exceeding marginal costs. However, because, in theory, entry into monopolistically competitive markets is largely unimpeded, profits are driven toward “competitive” or normal levels, at least in the long run. In oligopolistic and monopolistically competitive markets firms have some discretion over price and/or product and service quality because they face downward sloping demand curves.

21. Structural characteristics of the market, as measured by the number and concentration of firms, are an important but not determinative feature of the intensity of competition. Indeed, even a firm with a large market share may not, in some circumstances, possess substantial market power. In fact, as noted below, market behaviour of incumbents is also critically affected by the threat of entry, which, in turn, depends on the extent to which the relevant market is protected by entry barriers.⁹
22. Therefore, in practical terms, structural features of the market provide only a starting point for the assessment of the intensity of competition in any given market and the extent to which any given firm has (or can gain) substantial market power, or, for that

7 See X. Vives, *Oligopoly Pricing: Old Ideas and New Tools*, MIT Press, Cambridge, Massachusetts, 1999, for a comprehensive discussion of oligopolistic markets.

8 According to economic theory, a “normal” level of profits is defined as return on assets just sufficient to warrant the replacement of economic assets carried by the firm, taking into account the risk associated with these assets. Firms generally strive to earn profits that exceed such levels.

9 Barriers to entry can be any factor that makes it more difficult for a firm to enter or expand operations in a market. There has traditionally been considerable debate among economists as to what constitutes an entry barrier, although most economists now subscribe to the view that entry barriers can be structural, strategic or legal/regulatory (in other words, an expansive view of what constitutes an entry barrier now prevails).

When a relevant market is totally unprotected by any entry barrier, it is said to be “perfectly contestable.” Market outcomes in a perfectly contestable market “mimic” those in perfectly competitive markets even when there are only a few sellers or, in the extreme, just one seller. Perfect contestability, like perfect competition, is a textbook abstraction from which essentially all real world markets deviate to differing degrees. E.g., see D. Carlton and J. Perloff, *op. cit.*, Chapter 8; and M. Motta, *Competition Policy: Theory and Practice*, Cambridge University Press, Cambridge, UK, 2004, Chapter 2.

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matter, any degree of market power.¹⁰ For example, no single firm can exercise substantial market power in a relevant market that is not substantially concentrated or protected by significant entry barriers. It is the degree of rivalry between and among firms, as manifested by their behaviour in the marketplace, that is the prime indicator by which one evaluates how competitive a market actually is.

23. Almost by definition, rivalry among firms necessarily involves inherently aggressive behaviour. Thus, competition does not require that competitors in a market provide assistance to one another so that each may gain customers and sales.¹¹ Nor does it require that larger competitors should step aside so that smaller competitors may gain a foothold in the market. To the contrary, competitors, as rivals, must continuously seek to gain advantage in the marketplace. Such behaviour is generally efficiency enhancing and should be encouraged, since, ultimately, consumers benefit from unrestricted and vigorous competition. What is important for competition analysis, of course, is separating aggressive but efficient behaviour from behaviour that is inefficient because it undermines competition.

IV.1.1 Market Power and Competition

24. It is important to be precise when using the term “market power” in terms of its meaning in economics. To an economist, market power merely implies that a firm has some discretion over its prices and/or its level of product quality.¹² In mathematical terms, the existence of some degree of market power implies that the firm that possesses it faces a downward sloping demand curve (so that, should it raise its prices,

10 E.g., see, J. Ordoover, op. cit., for a comprehensive review of various economic indices of market power and social costs of monopoly.

11 While most economists agree that there is no general duty (from an economic perspective) to deal with a competitor in a workably competitive market (mainly because, in such a market, competitive considerations would provide an imperative to deal when it was efficient to do so), there is less of a consensus on this subject among economists in relation to markets where a firm exercises substantial market power. However, in markets where the firm has substantial market power as a result of incumbency inherited from a previously existing monopoly that was granted either by statute or through an exclusive franchise, regulations often impose a duty to deal explicitly or implicitly to foster competition in markets where previously there had been no competition. In such situations, an economic analysis of competitive effects and conduct may have to be viewed through the lens of current or past regulatory obligations.

12 In technical economic terms this is indicative of the fact that the firm faces a downward-sloping demand curve, so that an increase in price would not necessarily result in a loss of all the firm's sales. By contrast, in a perfectly competitive market, any increase in price above the competitive level would result in the loss of all of the firm's sales.

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it would not lose all of its customers).¹³ Realistically, almost every firm has some “economic” market power.

25. The proper economic benchmark for gauging firm behaviour in an antitrust context is a workably competitive market.¹⁴ In a workably competitive market some (or even all) market participants may have some market power (i.e., some discretion over price), but no market participant has a substantial degree of market power (as defined by economists). In a workably competitive market, at any specific point in time, prices can deviate from underlying costs and the deployed technologies can deviate from the most efficient ones currently available. However, in such markets, economic forces drive the market, albeit not instantly, towards efficient prices, outputs and costs. At the same time, in such markets firms continuously vie for competitive advantage against their actual and potential rivals and strive to earn above-competitive rates of return on their investments.¹⁵ The prospect of above-competitive returns motivates entrepreneurs and managers and energises market competition.
26. The degree of market power of concern for competition policy generally is considerably higher than mere economic market power. The concept of a “substantial degree of market power” (or, in the parlance used in the United States in antitrust analysis, “monopoly power”) is the threshold of concern.¹⁶ In economic terms this indicates that a firm can act persistently in a manner materially different from the behaviour that would be observed for a firm in a “workably competitive” market.

13 Contrast this result with the result that would occur in a perfectly competitive market, where no firm has any degree of market power. If a firm in a perfectly competitive market were to raise its prices above the prevailing price, it would lose all of its sales.

14 E.g., see J. Clark, “Toward a Concept of Workable Competition,” *American Economic Review*, Volume 30, 1940, p. 241; and A. Meese, “Monopolization, Exclusion, and the Theory of the Firm,” *Minnesota Law Review*, Volume 85, 2005, 743, pp. 772-793. I consider the terms “workable competition” and “effective competition” as interchangeable.

15 Because these markets are generally in flux (i.e., characterised by “disequilibrium” conditions), firms may have opportunities to earn above-competitive rates of return for some periods.

16 There are pricing constraints that operate even on a monopolist, of course. This phrase usually means that a firm can profitably price significantly above the competitive level and for a significant period of time or, alternatively, that it has no significant competitive constraint on its prices.

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Alternatively, again in economic terms, firms with substantial market power or with dominance face no significant constraint from competition.¹⁷

27. Firms can attain market power, regardless of degree, through pro-competitive means as well as regulatory fiat.¹⁸ For example, market power (or even monopoly power) can derive from product innovation, particularly efficient production methods, or an exclusive franchise awarded by government authority. Firms generally seek to gain advantages in the marketplace that will result in obtaining some degree of market power and undertake investments that will sustain such market power. They may even obtain a “substantial degree of market power” (or “monopoly power”) through the development and deployment of legitimate competitive advantages, such as a path-breaking innovation or the deployment of new technology that supersedes that of other competitors and renders their production processes obsolete or obsolescent.
28. For this reason, from an economic perspective, the mere existence of market power is rarely a competitive “problem” in the sense that it requires intervention. It is only when market power is exercised or perpetuated in a manner that causes substantial harm to competition and consumers that antitrust intervention may be warranted. Consistent with this view, firms with market power should not be prevented from engaging in aggressive, efficiency-enhancing competitive behaviour. Otherwise, entry or expansion by less efficient rivals would be encouraged and/or healthy rivalry would be stymied. Ultimately, this would harm consumers.
29. Market power is not necessarily correlated with market share, although firms with relatively high market shares sometimes can exercise significant market power and firms with relatively low market shares seldom can. In economic terms, market power is the ability to earn returns substantially in excess of the opportunity cost of capital without attracting ‘significant’ entry (that is, entry that would likely impose substantial competitive constraints). Firms with substantial market power are generally able to do

¹⁷ I use the terms “substantial market power” and “dominance” interchangeably. In economic terms I interpret both to indicate a sufficient degree of market power so that the firm that possesses it is essentially unconstrained by competitors.

¹⁸ *United States v Aluminium Co. of America* 148 F.2d 416 (2nd Cir. 1945).

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so not just as a consequence of a high market share but because their market is protected by entry (and/or expansion) barriers.¹⁹

IV.1.2 The Economic Objectives of Competition Policy

30. Economists agree that the purpose of competition policy is to protect the competitive process because competition generally enhances efficiency and thereby improves social welfare. This principle does not imply, however, that business conduct is inconsistent with the objectives of competition policy merely because it may deviate from the theoretical benchmarks of behaviour in perfectly competitive or contestable markets. Competition policy should aim to promote conduct that, in the long run, promotes society's interests by spurring market rivalry, innovation and facilitating pro-competitive entry. Put another way, ensuring "workable competition" is an objective of antitrust policy to which economists widely subscribe.²⁰
31. Economists also agree that the proper function of competition policy is to protect competition, not advance the private interests of individual competitors. While this distinction may, at first, appear confusing and/or unimportant, it is a fundamental economic principle of competition policy. From an economic perspective, competition policy should not be used to provide artificial benefits to individual competitors that, in effect, enable them to gain advantages not otherwise available through the competitive process. This is even more important when providing artificial benefits to some competitors imposes unwarranted costs on other firms. Such handicapping can lead to less efficient outcomes and, ultimately, consumer harm.

IV.2 Relevant Effects in Assessing the Economic Impact of a Merger

Question a: As a matter of economic theory, what are the relevant effects to consider when assessing the economic impact of a merger or acquisition?

19 This leads to the definition of an entry barrier as a factor or condition (behavioural or structural or both) that enables an incumbent to persistently earn returns higher than its opportunity cost of capital without attracting significant entry.

20 E.g., see D. Greer, *Business, Government, and Society*, 3rd Edition, Macmillan, New York, 1993, p. 99; and J. McCall, *Sum and Substance of Antitrust*, 2nd Edition, Josephson/Kluwer Legal Educational Centers, 1986, p. 45; and D. Carlton and J. Perloff, op. cit., Chapters 3 and 19.

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32. The discussion above in Section IV.4 provides information relevant to answering this question. Specifically, in terms of measures of welfare and efficiency, the relevant effects to consider are the impacts on prices, output and costs (i.e., parameters that are related to calculation of total surplus). Where multiple products are concerned, these effects may have to be disaggregated by the individual products at issue. While broader effects on economy-wide allocative efficiency are relevant, they can be, as noted above, often difficult to measure, but still potentially significant. To the extent that effects on prices, output and costs can be measured not only in terms of short-run effects (static efficiency) but also over the long run (dynamic efficiency effects), such measurements would be highly relevant to assessing the economic impact of a merger or acquisition.
33. One useful benchmark that may provide insight into price and output effects is an assessment of competitive alternatives, including both supply-side substitution and entry (as well as entry barriers). In circumstances in which multiple significant competitive alternatives continue to exist and entry barriers are not high (and/or can be reduced in magnitude, for example, through government action), negative economic impacts may be substantially ameliorated or even eliminated. Therefore, an assessment of competitive alternatives (with and without the proposed acquisition) is useful as well.
34. Finally, measurement of other indicators of economic benefit may also be relevant to assessing the economic impact of a proposed acquisition. These may include, among other things, impacts on international competitiveness, production efficiency, export earnings (including flow-on effects from increased earnings and/or efficiency improvements, such as increased commodity production and processing activity in Australia), employment (including indirect benefits such as increases in income taxes and reductions in unemployment and related costs) and fostering the growth in related economic activity (e.g., multiplier effects of increased economic activity).

IV.3 Market Definition

Question b(1): What are the economic principles and methodologies relevant to defining the relevant market or markets for the purpose of analysing the competitive effects of Tabcorp's proposed merger with Tatts (the proposed merger)?

IV.3.1 Complements and Substitutes

35. The most fundamental concept in market definition analysis is that of substitution. As such, it is useful to review the concepts of economic substitutes and economic complements, which, mathematically, are the opposite of substitutes in the way in which sales react to prices.
36. Assume that two Products – Product A and Product B – are economic substitutes. In that case, an increase in the relative (to the price of Product B) price of Product A will, ceteris paribus, result in a decrease in the sales for Product A (given the standard assumption – which is applicable to the vast majority of all real world products – of a negative own-price elasticity) and an increase in sales for Product B (i.e., the cross price elasticity of Product B with respect to the price of Product A – and vice versa – is positive).
37. For economic complements the opposite mathematical relationship prevails. Assume that sales for Product X increase (decrease) as a direct consequence of a price decrease (increase) for another (in some manner related) product – Product Y. In such a situation Products X and Y are economic complements. If Products X and Y were substitutes, an increase in the price of Y would result in an increase in the sales of X.
38. As with substitutes, more formally, the concept of a complement can be understood in terms of cross-price elasticities of demand. Price elasticity of demand is a measure of the change in quantity demanded resulting from a change in price (and is defined as the percentage change in quantity demanded divided by the percentage change in price). While own-price elasticity of demand measures the change in demand for a product when its own price changes, cross-price elasticity of demand measures the change in demand for one good when the price of another (related) good is changed (where such cross-elasticities, as is the case for own-price elasticities as well, are measured on the basis that prices of all other goods are assumed to be unchanged). For substitutes, the cross-price elasticity of demand is positive. That is, for substitutes, a price increase for Product B will result in an increase in the sales of Product A. For complements, cross-price elasticities of demand are negative. That is, for complements, a price increase for Product Y will result in a decrease in the sales of Product X.

IV.3.2 Defining Relevant Markets

39. In a market economy goods and services are exchanged between buyers and sellers and resources are allocated by means of price signals within a market.²¹ For competition purposes, the market definition task delineates an area of close competition relevant to the firms, products and conduct at issue.²² As such, defining the relevant market will assist in identifying the most important competitive constraints on the firm(s) and conduct at issue. Substitution, in either demand and/or supply, is what defines that area of close competition.²³ More specifically, it is *close* substitutes that one seeks to identify, since it is close substitutes that will impose competitive discipline on the firm and conduct at issue.²⁴ The ACCC *Merger Guidelines* are consistent with this principle.²⁵
40. Economists measure the degree of substitutability using the concepts of the price elasticity of demand and the cross-elasticity of demand.²⁶ While own-price elasticity

21 'Markets' in this sense may involve both spot exchange and/or longer term contracts, and, where 'transactions costs' are too high, market exchange may be replaced by the internal allocation of resources within the firm, through vertical integration or other forms of vertical relationships.

22 D. Scheffman and P. Spiller, "Geographic Market Definition under the U.S. Department of Justice Merger Guidelines," *The Journal of Law and Economics*, 30(1), 1987, pp. 123-147.

23 E.g., D. Carlton and J. Perloff, op. cit., pp.646ff.

24 E.g., see M. Motta, op. cit., pp. 103ff and J. Baker, "Market Definition: An Analytical Overview," *Antitrust Law Journal*, 74, 2007, p. 129.

25 Australian Competition and Consumer Commission, Merger Guidelines, November 2008, see Chapter 4, particularly pages 16-23. For example, paragraphs 4.12 and 4.13 of this document state:

... identifying relevant substitutes is key to defining a market. Substitution involves switching from one product to another in response to a change in the relative price, service or quality of two products (holding unchanged all other relevant factors, such as income, advertising or prices of third products). Market definition begins by selecting a product supplied by one or both of the merger parties in a particular geographic area and incrementally broadening the market to include the next closest substitute until all close substitutes for the initial product are included.

There are two types of substitution: demand-side substitution, which involves customer-switching; and supply-side substitution, which involves supplier-switching.

26 The price elasticity of demand for a product is defined as the percentage change in quantity divided by the percentage change in price, when the prices for all substitute goods are held constant. It is almost always negative (i.e., as price increases, demand decreases and vice versa).

The cross elasticity of demand (for product 1 with respect to product 2) is defined as the percentage change in demand for product 1 divided by the percentage change in price for product 2. If it is negative (e.g., as the price of product 2 decreases, the demand for product 1 increases), then the products are said to be complements. If it is positive (e.g., as the price of product 2 increases, the demand for product 1 increases), then the products are said to be substitutes.

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provides substitution information, cross-price elasticities help define the boundaries of localised competition.²⁷

41. Demand side substitution occurs when a change in relative prices induces a shift in demand from (for example) a relatively higher priced product to a relatively lower priced product. Note that economists distinguish between *economic* substitutes and *technical* substitutes. Similarity of characteristics and function relate to “technical substitutability” (i.e., whether products provide similar services/functionality to purchasers), not necessarily to economic substitutability. Economic substitutes constrain the price of the product of interest. Although technical substitutes may have many of the same characteristics or provide many of the same services as the product of interest, technical substitutes would not necessarily sufficiently constrain the price of the product of interest. If they do sufficiently constrain that price, the technical substitutes would also be considered to be economic substitutes.²⁸
42. Supply side substitution occurs when a change in relative prices induces a shift in supply, using existing capacity,²⁹ e.g., from a relatively less profitable product to a relatively more profitable product. The availability of opportunities for substitution for a firm’s product(s) will constrain the firm from increasing its prices or otherwise disadvantaging consumers.
43. While demand-side substitution is relatively straightforward (even if often misinterpreted), analysts are often confused about supply-side substitution as it is used in market definition analysis. The confusion is particularly acute in parsing between supply-side substitution and entry. The concept of supply-side substitution is based on the principal of so-called “hit-and-run entry”. Such entry can only be accomplished if a

27 D. Rubinfeld, “Market Definition with Differentiated Products: The Post/Nabisco Cereal Merger,” *Antitrust Law Journal*, 68 (1), 2000, p. 163.

28 In discussing demand-side substitution, the ACCC states that, while similarity of product characteristics or function (i.e., technical substitutability) may be “indicative” of economic substitutability, it is “not sufficient to determine whether products are demand-side substitutes.” See Australian Competition and Consumer Commission, *Merger Guidelines*, November 2008, paragraph 4.14, pp. 16-17.

29 Where new capacity and/or significant new investment are required to supply the new product, this is considered to be market entry, requiring an analysis of barriers to entry. Note that “supply-side substitution” carries this narrow meaning within the context of market definition analysis. However, the term “supply-side substitution” outside this context could refer to either shifts of existing capacity to supply of another product or to development of new capacity to supply a product.

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firm mainly uses existing assets, with no or minimal investment in sunk costs, to shift production from another product to the product of interest. Such production shifts must occur very quickly – generally within a few months at most – and must be profitable, not only in the sense of recovering at least marginal costs, but also in the sense of recovering any sunk costs required to fund the production shifts within a very short period – generally within one year.³⁰ Again, the ACCC’s Merger Guidelines indicate that the Commission’s view on supply-side substitution is broadly consistent with this view of supply-side substitutability.³¹

30 E.g., see J. Ordober and J. Baker, “Entry Analysis Under the 1992 Horizontal Merger Guidelines,” *Antitrust Law Journal*, 61 (1), Summer 1992, p. 139; and J. Ordober and R. Willig, “Economics and the 1992 Merger Guidelines: A Brief Survey,” *Review of Industrial Organization*, 8, 1993, p. 139. The newest United States’ *Horizontal Merger Guidelines* (issued jointly by the Department of Justice and the Federal Trade Commission, 19 August 2010) do not specify a particular time period for supply-side substitution but instead refer to “rapid entrants” (pp. 15-16). The ACCC *Merger Guidelines* merely specify that supply-side substitution should occur “quickly” (p. 18).

31 The ACCC draws a very sharp distinction between the supply-side substitution and entry. According to the ACCC, a product may be a supply-side substitute for another product if, in response to an increase in the price of the second product:

- “the production facilities and marketing efforts used for that product can be switched quickly and without significant investment to supply a demand-side substitute for the product of the merger party (the product dimension of the market);
- “the distribution network used by the product can be modified quickly and without significant investment to supply the merger party’s customers at their present location or within a distance they would likely travel (the geographic dimension of a market); and
- “it would be profitable for the current suppliers of the product to make these changes— that is, the profits earned on the assets in their current use would be less than if these assets were switched to supply a demand-side substitute for the product of the merger party.” (see Australian Competition and Consumer Commission, *Merger Guidelines*, paragraph 4.23, page 18).

Note that, while the ACCC’s Merger Guidelines (unsurprisingly) specifically refer to mergers, the principles contained in that document are generally applicable to defining relevant markets in any context. This is true elsewhere in the world as well – e.g., as where, in the United States, the Department of Justice’s/Federal trade Commission’s Horizontal Merger Guidelines as used, with some modification, as a guide to defining relevant markets in non-merger cases as well, both by the antitrust regulators and private parties.

According to the ACCC’s Merger Guidelines, the ACCC will only treat a product as a supply-side substitute for another product in circumstances where all or virtually all of the capacity used to produce the first product could profitably be switched to supply the substitute quickly and without significant investment. In circumstances where all or most of the capacity could not be switched quickly or without significant investment, the ACCC considers that the capacity should be viewed from the perspective of entry, not as relevant to supply-side substitution (and therefore not relevant to market definition). Consequently, consideration of barriers to entry would be relevant to determining the impact of such capacity (i.e., capacity associated with entry) on competition, but barriers to entry are not a relevant consideration for supply-side substitution (i.e., because there essentially can be no barriers to entry in the case of supply-side substitution) (see paragraphs 4.23-4.24 of the ACCC’s Merger Guidelines, page 19).

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44. In considering “close substitution,” the question naturally arises as to how close substitution must be for the purpose of defining a market?³² In the United States, the European Community and Australasia, antitrust regulators and others utilise the so-called hypothetical monopolist paradigm, which employs the SSNIP test (small but significant non-transitory increase in price³³) – also known as the hypothetical monopolist test.³⁴ The hypothetical monopolist test has been adopted as the pedagogical tool for determining market boundaries by most competition authorities in their merger guidelines (and is commonly used as a pedagogical tool in other competition analyses as well).³⁵ This test attempts to provide a more precise framework for analysing substitutability. The relevant market is identified as the smallest area over which a hypothetical monopolist could profitably impose a SSNIP.³⁶ Starting with the firm, product(s) and geographic area(s) of supply, the market is gradually expanded to encompass all sources of close substitution that would otherwise defeat such a SSNIP (i.e., by making it unprofitable through sufficient demand- and/or supply-side substitution). While the hypothetical monopolist test posits a purely quantitative analysis to determine market boundaries, in most instances insufficient and/or insufficiently reliable data exist to apply the test in a purely quantitative manner.

32 E.g., see J. Baker, op. cit., pp. 129 and 142ff; and M. Motta, op. cit., pp. 102-103; and M. Coate and J. Fischer, “A Practical Guide to the Hypothetical Monopolist Test for Market Definition,” <http://ssrn.com/abstract=940667>, 2007, pp. 6-10 for a discussion of substitutability and market definition analysis.

33 For a hypothetical monopolist the SSNIP test posits a small but significant non-transitory increase in price, while for a hypothetical monopsonist (ie, a monopolist buyer) the SSNIP test posits a small but significant non-transitory decrease in price.

34 In merger cases, the SSNIP is supposed to be applied using currently prevailing prices, because the objective is to determine whether and to what extent the merger parties can enhance any market power they currently possess. Consequently, market boundaries are evaluated based on substitution possibilities that exist prior to the merger’s occurrence.

35 See, for example, the Australian Competition and Consumer Commission, *Merger Guidelines*, Section 4 and the United States Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines*, issued 19 August 2010, Section 4.1.1.

36 The SSNIP may be defined at any level, but is generally defined in the 5–10 per cent range (e.g., see United States’ *Horizontal Merger Guidelines*, issued August 19, 2010, p. 10, and ACCC, *Merger Guidelines*, paragraph 4.21). For non-merger analyses, the benchmark price level from which a SSNIP is, as noted above, assessed is the competitive market price level. The reason why one should focus on the smallest possible area either in geographic or product space is that the objective of any market definition is to provide a context for evaluating competitive concerns. These are best evaluated in the smallest possible area over which a SSNIP test would be valid. If the market were to be defined too broadly the analyst may mistake the abundance of alternatives as indicative of the existence of multiple sources of constraint. However, in a too-broad market these alternatives would not necessarily be able to discipline the competitive conduct of some (or even all) suppliers of the product(s) of interest.

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Consequently, the test is usually applied notionally, using an analysis of qualitative information.

45. If there are several products that compete within the same market, then it is the cumulative switching to all these alternative products by consumers that determines whether close demand-side substitutes for a specific product exist.³⁷ If the cumulative effect is sufficient to make the SSNIP unprofitable, then all close substitutes should be included in the market, even if switching to each individual product (or even cumulatively to a subset of those products) in isolation may be insufficient to make the SSNIP unprofitable.
46. There is a broad consensus among economists and regulators, first, that market definition analysis can be of considerable assistance in many circumstances for assessing competition issues and, second, that the hypothetical monopolist paradigm and the SSNIP test are useful methodological tools for evaluating market boundaries. While analysis of demand-side substitution is widely viewed as necessary step in defining market boundaries, there is some dispute among economists as to whether consideration of supply-side substitutability is necessary to define the boundaries of a relevant market. For example, the United States *Horizontal Merger Guidelines* does not include supply-side substitutability considerations in defining relevant market boundaries, but instead uses supply-side substitutability to identify participants in a relevant market.³⁸ In a general sense, in my opinion, in most circumstances both approaches are broadly consistent in terms of the answers they derive.

37 When identifying plausible substitutes one should be mindful of the fact that the objective of the SSNIP test is to define the smallest market (e.g., in terms of product space and geographic space) that would satisfy the requirements of the SSNIP test as applied to the hypothetical monopolist paradigm.

38 E.g., see J. Ordovery and R. Willig, op. cit., p. 144.

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47. More recently, there have been significant questions raised about the efficacy and relevance of conducting formal market definition analyses.³⁹ While these questions raise issues that have substantial merit, in my opinion there remains significant utility in engaging in the traditional market definition exercise, particularly given the additional rigor it can lend to the analysis in conjunction with use of alternative analytical approaches to assessing competitive impacts.

IV.3.3 Market Dimensions

48. Markets are generally defined in terms of product, geographic and functional space and sometimes in terms of time and customer dimensions.

IV.3.3.1 Product Market

49. The analysis of any market should begin with the product(s) at issue, which is (are) the product(s) sold by the firm(s) whose conduct is of interest in the case. Products should be narrowly defined in an economic sense – that is, products should be defined so as to eliminate from any potential relevant market products that potentially do not compete according to the criteria set forth above in relation to the hypothetical monopolist test. There is, of course, an element of judgment and practicality in such a separation exercise. Thus, for example, if a firm produces two types of laundry soap for automatic washing machines (and/or several sizes of packages for each type of laundry soap) as well as dishwashing soap, one might, at least as an initial matter, consider all the laundry soap as part of one relevant market and all of the dishwashing soap as part of another (i.e., since all of the different variants of laundry soap likely are economic substitutes, whereas laundry soap and dishwashing soap, at least from a demand-side perspective, may not be economic substitutes).

39 S. Salop, “The First Principles Approach to Antitrust, Kodak, and Antitrust at the Millennium,” *Antitrust Law Journal*, 68, 2000, p. 187; J. Farrell and C. Shapiro, “Antitrust Evaluation of Horizontal Mergers: An Economic Alternative to Market Definition,” *The B.E. Journal of Theoretical Economics: Policies and Perspectives*, 10 (1), 2010, Article 9, <http://faculty.haas.berkeley.edu/shapiro/alternative.pdf> and R. Gilbert and D. Rubinfeld, “Revising the Horizontal Merger Guidelines: Lessons from the U.S. and the E.U.,” February 2010. The newest version of the Horizontal Merger Guidelines in the United States (issued 19 August 2010) incorporates many of these views, in particular the view that the closeness of substitutes within a market is as important in some cases as the overall market boundaries and the identification of the products in the overall market; “Federal Trade Commission Seeks Views on Proposed Update of the Horizontal Merger Guidelines,” press release, 20 April 2010, <http://www.ftc.gov/opa/2010/04/hmg.shtm>.

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50. These product categorisation decisions can be “tested” notionally or empirically using the hypothetical monopolist paradigm. A notional test would essentially be a thought experiment. An empirical test would derive and/or employ estimates of own-price elasticities of demand and cross-price elasticities of demand to identify economic substitutes and market boundaries. Such information can be derived through statistically valid analyses of large sets of demand and pricing data.⁴⁰
51. In most cases, reliable empirical elasticity estimates cannot be derived, either because the requisite data are practically unavailable or are insufficiently reliable. Consequently, judgment is most often the primary means by which market boundaries are specified. In such circumstances, common sense is generally a useful guide for determining, at least in an approximate sense, market boundaries, although it can be useful in some circumstances to test the sensitivity of any conclusions drawn by considering alternative market boundaries.
52. In some circumstances thought experiments can be supplemented with data on buyer or supplier behaviour to define market boundaries. Among the types of data that can be utilised in circumstances where elasticity estimates either are practically unavailable or are insufficiently reliable are the following:
- (a) Evidence/information that buyers have shifted or have considered shifting or would consider shifting purchases between products in response to relative changes in price or other competitive variables;
 - (b) Information on the conduct of suppliers and sales patterns in the marketplace;
 - (c) The influence of downstream competition faced by buyers in their output markets or upstream competition faced by suppliers in their input markets.⁴¹

40 There have been attempts to use the intersection of demand and supply during different time periods to derive price elasticities (i.e., by comparing prices received and quantities demanded across these time periods). Price elasticities derived in this manner are statistically invalid and therefore completely unreliable, suffering from a very serious statistical problem known as the “identification problem”. E.g., see P. Kennedy, *A Guide to Econometrics*, Second Edition, Basil Blackwell, Oxford, 1990, pp. 128-132; and W. Greene, *Econometric Analysis*, Second Edition, Macmillan Publishing Company, New York, 1993, pp. 585-598.

41 See United States Federal Trade Commission and United States Department of Justice, *Horizontal Merger Guidelines*, issued 19 August 2010, pp. 11-12. Note that data that demonstrate the opposite of the factors included are also relevant in defining boundaries for relevant markets (e.g., evidence that buyers would not or have not shifted purchases to other in response to significant price increases for the product(s) of interest).

IV.3.3.2 Geographic Market

53. The geographic dimension of the market is analysed in much the same manner as the product dimension with one important exception. In investigating the extent of the geographic market(s) of interest, one should not necessarily automatically begin with the geographic area over which the impugned firm's (or firms') product are supplied as the initial estimate of the geographic market's (or markets') extent. Instead, because (as with the relevant product market) the relevant geographic market is defined as the smallest possible area over which a hypothetical monopolist could profitably impose a SSNIP, one should begin the exercise of geographic market definition with the location of the firm(s) of interest as the central point in any geographic market and posit boundaries based on this (these) location(s). Each supply location could, at least initially, be considered as the focal point for an individual geographic market, although, upon investigation (assuming there are several supply locations), it may be true that one geographic market may contain several supply locations.
54. As with the product market, one could test these posited boundaries using empirically-estimated elasticities and cross-elasticities of demand or with a thought experiment based on other quantitative information (e.g., shipments data into or out of different geographic areas or shipment costs) or qualitative information that would be relevant to defining a relevant geographic market. Again, as with posited product market boundaries, it may be useful to test the sensitivity of any posited anti-competitive impacts by analysing the influence of changes in geographic market boundaries on those impacts.
55. Finally, as with product markets, a variety of empirical data on buyers and suppliers may be used to determine the extent of geographic boundaries.⁴²

IV.3.3.3 Functional Market

56. Functional markets relate to the part (or level) of the supply chain that is relevant to the analysis. Most importantly from the perspective of considering competitive implications, the different functional levels that relate to a particular product market are

⁴² See United States Federal Trade Commission and United States Department of Justice, *Horizontal Merger Guidelines*, issued 19 August 2010, p. 14.

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related in a vertical, rather than a horizontal manner. For example, the vertical elements in a product market chain (which can each be, at least in some circumstances, separate functional markets) are traditionally viewed in terms of manufacturing, wholesaling and retailing functions. However, in specific markets, the distinctions among these levels may be sufficiently blurred that some or all may be considered as one functional level. Alternatively, it is possible that other functional levels (either in place of and/or in addition to these levels) may be relevant to the analysis.

57. The functional market concept is quite different in nature than the product and geographic market concepts. Most important, because the different functional levels are related vertically, not horizontally, in economic terms the different functional markets in any chain of distribution for a product are economic complements, not substitutes, in the supply of goods and services. Consequently, the hypothetical monopolist test, which is fundamentally grounded in the analysis of competitive – as opposed to complementary and, generally in the case of the vertical elements in a distribution chain for a specific product, co-operative – interactions in order to identify economic substitutes, is not useful for the identification of relevant functional markets because the different functional market levels are not substitutes.

IV.3.3.4 Other Market Dimensions

58. There are two other market dimensions that may, in some cases, be relevant to the specification of relevant markets for competition analysis – time and customers. The time dimension refers to location of market boundaries at different points in time. This dimension may be important in the case of markets whose boundaries have been changing or are expected to change in some substantial manner over the relevant time period. The customer dimension is important in circumstances where suppliers (or buyers) can price discriminate so as to separate customers (or suppliers) into distinct groups for pricing purposes. In such cases these separate customer groupings can be treated essentially as if they are separate relevant markets from the demand-side, although, from the supply-side, they may not be separable.

IV.3.3.5 The Objective of Market Definition

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59. It is important to note that the market definition exercise is not an end in itself, but is rather a tool for analysing the competitive issues of interest. Consequently, markets should properly (and consciously) be defined so as to illuminate those competitive issues. This implies that the market definition step is contextual (or “purposive”) in that one must first identify the conduct at issue before one embarks on the market definition exercise in order to embed the competitive issues of interest firmly within the analysis of that conduct.
60. Once one has identified the market, one can proceed to an analysis of its structure. An analysis of structure will include a description of vertical and horizontal elements and participants. Once these elements and participants are identified, market shares at the relevant functional level(s) can be estimated and an analysis of market power undertaken.

IV.3.3.6 Methods for Market Definition Analysis

61. This Section has already identified the main methods used for defining relevant markets. The hypothetical monopolist test, implemented as a thought experiment is, by far, the most common method used to define relevant markets (at least in terms of product and geographic dimensions).⁴³ While this test generally employs some combination of qualitative and quantitative data (e.g., see some of the product and geographic market factors set forth in the U.S. *Horizontal Merger Guidelines*⁴⁴), there are many instances where an emphasis on qualitative analysis – akin to a commercial common sense standard – is utilised.
62. The main methodological alternative to use of the hypothetical monopolist test on the demand-side is estimation, using statistical techniques, of the elasticities and cross-elasticities of demand to identify market boundaries. Since the data for such estimations are generally either unavailable or may produce either unreliable or

⁴³ Harkrider, John. “Operationalizing the Hypothetical Monopolist Test,” p.1. <<http://www.ftc.gov/bc/mergerenforce/presentations/040217harkriderhmt.pdf>>

⁴⁴ United States *Horizontal Merger Guidelines*, issued 19 August 2010, pp. 11-12 and 14.

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inaccurate results, identification of market boundaries using this purely quantitative method is uncommon.⁴⁵

IV.4 Assessing Competitive Effects of Proposed Mergers

Question b(2): What are the economic principles and methodologies relevant to assessing the competitive effects of the proposed merger?

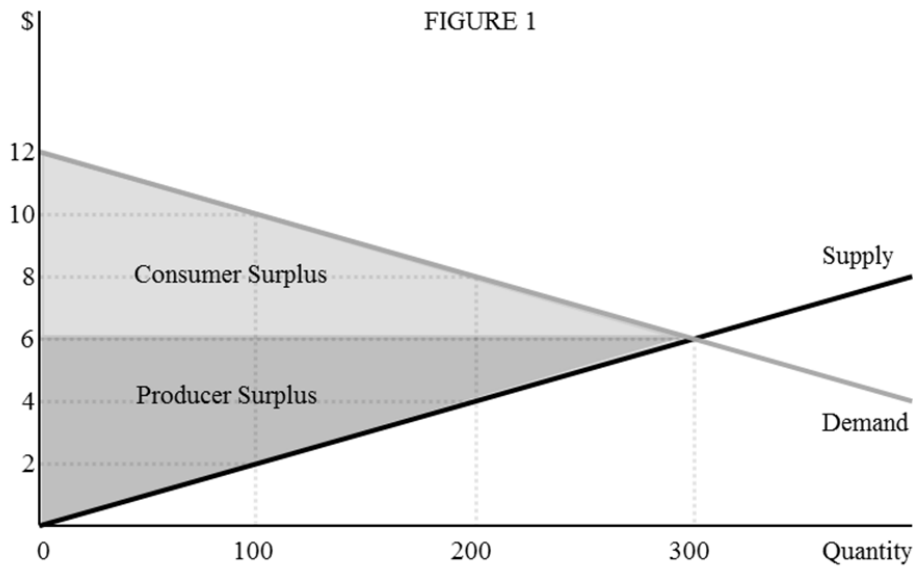
63. It is my understanding that the relevant test for determining whether the merger should be authorised is a Public Benefits test – i.e., do the public benefits of the merger outweigh any public detriments associated with it. While such a test may consider both economic and non-economic objectives, my assessment focuses only on the economic measures that may be useful in applying a Public Benefits test.
64. One key element in any economic assessment of the competitive effects of any merger is the concept of economic welfare, which in economic terms is measured by economic efficiency. Economic efficiency is a measure of economic performance. One of the reasons why economists use the concept of perfect competition as a pedagogical tool is that efficiency (and, consequently, economic benefits) is (are) maximised if competition is perfect. While this objective is not achievable in the real world, it is a useful theoretical benchmark.
65. Efficiency is measured as the sum of producer surplus – the amount by which the price received by suppliers exceeds the marginal costs they incur – and consumer surplus – the difference (summed over all consumers) between the amount consumers are willing to pay for a product and the price that they have to pay. Both concepts are illustrated in Figure 1. The sum of producer surplus and consumer surplus is total surplus and is a common measure of economic efficiency.⁴⁶

45 One of the best-known examples of the use of statistical techniques to identify market boundaries occurred in the context of a merger in the breakfast cereals marketplace – see D. Rubinfeld, “Market Definition with Differentiated Products: The Post/Nabisco Cereal Merger,” *Antitrust Law Journal*, 68 (1), 2000, p. 163.

46 Three types of efficiency are generally referred to in the economic literature:

- a. Productive efficiency is maximised when production in the economy occurs at minimum cost (i.e., the most efficient use of inputs).
- b. Allocative efficiency is maximised when the utility gained from the distribution of goods and services across the economy is maximised in light of consumer preferences (i.e., the most efficient distribution of overall output).

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66. Direct measurement of changes in economic efficiency (i.e., direct measurement of changes in consumer surplus and changes in producer surplus) are often not possible, so alternative measures of competitive benefits (and competitive detriments) are generally utilised as a proxy to assess competitive impacts. At times, estimates of effects on prices and outputs may be possible, and these estimates can provide significant insight into likely efficiency effects. Other measures of benefits may also be useful in evaluating the effects of a proposed merger – and more feasible in terms of measurement. Such measures can include the direct, merger-specific efficiency benefits the parties expect to derive from the transaction, employment impacts and any potential impacts on national income (including impacts on the international competitiveness of the industry and/or its domestic participants).
67. Another useful proxy for measuring welfare impacts entails an assessment of the competitive conditions in the industry and a determination as to whether and to what extent (if any) there would likely occur significant changes in competitive conditions in response to the proposed merger. This requires an assessment of the impact (if any) on barriers to entry and industry competitive trends in order to understand the industry

c. Dynamic efficiency is a measure of the ability of the economy to adapt to changes in prices and technology over time.

While dynamic efficiency yields both allocative and productive efficiency benefits over the long run, these two other efficiency concepts are generally conceived as static concepts – i.e., they are measured against the current use of existing resources.

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context and the changes in competitive conditions that have occurred over time and the expected changes that may occur as a consequence of the proposed merger. Such information likely would provide insight into the competitive landscape (e.g., in terms of numbers and significance of competitors to the proposed merged entity and the effects of the proposed merger, if any, on industry trends and competitive conditions) that would likely prevail in the factual.

68. Finally, there may be important economic public policy objectives – some of which may be amenable to economic measurement – that may be affected by the proposed merger. For example, the proposed merger may affect the financial viability of an industry in a significant manner. If so, there may be direct and indirect economic effects that can be assessed, both in terms of the private sector (e.g., direct and indirect employment effects) and the public sector (e.g., tax and other payments to government entities). Estimates of these effects can be an important in determining whether the proposed merger will, on balance, provide net benefits or net detriments.

IV.5 Appropriate Welfare Standard: Total Surplus vs. Consumer Surplus

Question b(3): What are the economic principles and methodologies relevant to assessing the effect of the proposed merger on total economic welfare?

69. From an economic standpoint, the appropriate welfare standard to use when assessing a merger depends upon the ultimate goal of antitrust policy and upon the circumstances in which the standard is applied. While most economists agree that antitrust laws should have an ultimate goal of promoting economic efficiency,⁴⁷ this view may not always be consistent with legal practice. Some economists contend that antitrust law should concern itself with the distributional outcomes of a merger – in other words, antitrust law should be used to protect the interests of particular groups like small firms or consumers, but this view is controversial.⁴⁸
70. There is debate over whether consumer surplus or total surplus is the appropriate welfare standard to use in order to evaluate the potential efficiency benefits or

47 See D. Carlton and J. Perloff, op. cit., Chapter 19.

48 See D. Carlton and J. Perloff, op. cit., Chapter 19.

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detriments of a proposed merger.⁴⁹ A consumer surplus standard focuses on the potential gain or loss to consumers that may result from a potential merger. Under this standard, a merger would be prohibited if it reduces the surplus achieved by buyers. In contrast, a total surplus standard evaluates efficiency gains (or losses) to both consumers *and* producers. Under a total surplus standard, a merger that decreases producers' costs substantially could be permissible, even if this decrease in costs were accompanied by a small increase in the prices faced by consumers.⁵⁰⁵¹

71. Advocates for the consumer surplus standard have advanced a number of arguments. First, antitrust laws in many countries are “primarily concerned with the efficiency benefits directly passed through to consumers.”⁵² If the goal of antitrust policy is to promote consumer welfare or to prevent the redistribution of wealth away from consumers, adopting a consumer surplus standard may be more efficient than engaging in *ex post* remedies via tax policy.⁵³ Further, the adoption of a total surplus standard could, at times, lead to inefficiencies by adversely affecting competition and ultimately reduce total surplus.⁵⁴ For example, under certain conditions firms faced with a consumer surplus standard might choose to engage in a joint venture with a competitor, achieving cost savings but not decreasing market competition or raising price. When faced with a total surplus standard, these firms may instead choose to merge,

49 One fact upon which both sides tend to agree is that the consumer and total surplus standards will sometimes yield a different result. The efficiencies that arise from a merger may entail either a reduction in marginal costs and/or a decrease in fixed costs. While a reduction in marginal costs is often (at least in part) passed through to consumers and captured in a consumer surplus standard, decreases in fixed costs generally do not affect consumer surplus but enhance total surplus (and therefore total efficiency) in the economy. (See K. Heyer, “Welfare Standards and Merger Analysis: Why not the Best?” *Competition Policy International*, Autumn 2006, pp. 35-40) Salop further noted that consumer surplus and total surplus standards may not yield equivalent outcomes, even in the long run, since gains to producers will not necessarily be passed-through to consumers. (See S. Salop, “Question: What Is the Real and Proper Antitrust Welfare Standard? Answer: The True Consumer Welfare Standard,” *Loyola Consumer Law Review*, 2010, pp. 349-350.)

50 E.g., see D. Carlton and J. Perloff, op. cit., Chapter 19.

51 E.g., see J. Jacobson, “Another Take on the Relevant Welfare Standard for Antitrust,” *the Antitrust Source*, August 2015, where the author cites shortcomings in both consumer and total welfare standards and recommends focusing on output effects.

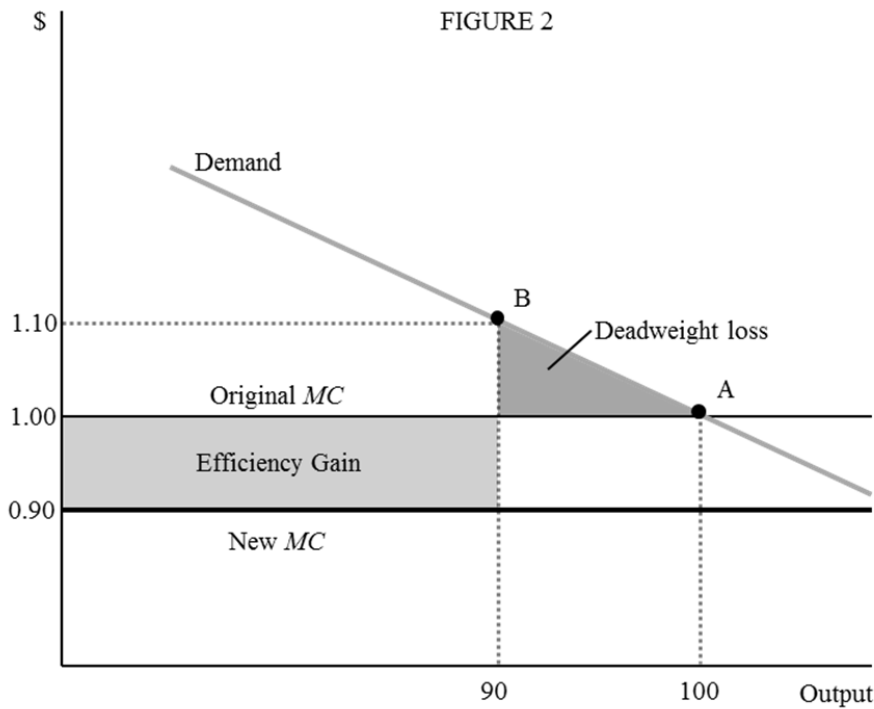
52 See R. Lande, “Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged,” *Hastings Law Journal* 34, 1982, p. 141. See also, S. Salop, op. cit., and J. Baker, “Economics and Politics: Perspectives on the Goals and Future of Antitrust,” *Fordham Law Review*, 81 (5) (2013), pp. 2` 175-2196.

53 S. Salop, op. cit., pp. 350-351.

54 S. Salop, op. cit., p. 352. While Salop provides a hypothetical example a case in which a joint venture increases consumer and total surplus more than a potential merger, he does not provide evidence on the frequency with which this situation might occur.

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internalising the same cost savings but decreasing competition, and thereby increasing price, transferring consumer surplus to the producers, and generating a so-called “deadweight loss” (caused by the increase in price and the decrease in equilibrium output). This is illustrated in Figure 2.⁵⁵



72. Conversely, a number of economists and legal scholars have taken the position that antitrust law should promote total economic efficiency.⁵⁶ For example, Orbach (2010) noted that that maximisation of consumer surplus may actually be counterproductive in certain cases (e.g., status goods).⁵⁷ Heyer (2012) noted that in “cases where the likely magnitude of merger-specific cost savings – whether marginal or fixed” are large,

55 E.g., see D. Carlton and J. Perloff, op. cit., Chapter 19.

56 See for example, R. Blair and D. Sokol, “Welfare Standards in U.S. and E.U. Antitrust Enforcement,” University of Florida Levin School of Law, UF Law Scholarship Repository, Publication 4-2013, 2013; and R. Posner, *Antitrust Law Journal*, viii, 2d ed., 2001, p. 2. Note that Posner viewed total efficiency using a Kaldor-Hicks standard. Kaldor-Hicks efficiency posits that an outcome is considered more efficient if a Pareto-superior outcome can be reached by arranging sufficient compensation from those that are made better off to those that are made worse off so that all would end up no worse off than before. Under Pareto efficiency, an outcome is more efficient if at least one person is made better off without making anyone else worse off.

57 B. Orbach, “The Antitrust Consumer Welfare Paradox,” *Journal of Competition Law & Economics*, 7(1), 2010, pp. 153-156.

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“these benefits to society would exceed any plausible deadweight welfare loss.”⁵⁸ He also noted that there are times (especially in mergers dealing with intermediate goods) where it is very costly to determine the direction or magnitude of the distributional impacts of a merger. A total welfare standard would increase total wealth and help to fund government tax and spending policies, which are more appropriate vehicles for dealing with issues of distributional equality.⁵⁹ Farrell and Katz (2005)⁶⁰ reasoned that, even if a consumer surplus standard better reflects society’s judgments about the appropriate distribution of economic welfare, the use of a total surplus standard is preferred because (1) it allows abstraction away from the uncertainty about the distributional effects on a case-by-case basis; (2) it can yield a more efficient solution for all parties if paired with an appropriate system of transfers; and (3) even if a particular level of redistribution was desired, antitrust policy is not the most efficient vehicle by which to implement this change.

73. One of the most significant objections to use of a total welfare standard – i.e., that including producer surplus skews benefits to higher income segments of the population – has been challenged by Farrell and Shapiro.⁶¹ They acknowledge that, among individuals who hold stocks, stock ownership is concentrated among higher income segments. However, they also note that the indirect benefits of stock ownership tends to be distributed much more broadly, as pension funds, for example, have vast stock holdings. In addition, they emphasise the need to view welfare from a broad perspective, which implies that total welfare, not just consumer welfare, is the proper standard for competition analysis.
74. Farrell and Katz (2006) decomposed this debate into two separate questions: (1) what should antitrust policy’s ultimate goal be, and (2) what objectives should antitrust

58 K. Heyer, “Welfare Standards and Merger Analysis: Why not the Best?” *Competition Policy International*, Autumn 2006 pp. 29 and 46.

59 See K. Heyer, *op. cit.*, p. 50.

60 J. Farrell and M. Katz, “The Economics of Welfare Standards in Antitrust,” *Competition Policy International*, Fall 2006, pp. 9-12.

61 J. Farrell and C. Shapiro, “Horizontal Mergers: An Equilibrium Analysis,” *The American Economic Review*, Vol. 80, No.1, Mar., 1990, p. 107.

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agencies and courts apply in their enforcement decisions.⁶² The authors noted that, while total surplus is the appropriate goal for antitrust enforcement, it may (or may not) be optimal for some agents involved in antitrust enforcement to focus on consumer surplus, even though the ultimate goal is to maximise total welfare. For example, under a simple game theory model, if antitrust enforcers adopt a consumer surplus standard, the mergers proposed by firms may exhibit a higher level of total surplus than if the enforcement agency adopts a total surplus standard.⁶³ In other cases, (e.g., in cases with a large fixed cost savings and small competitive effects) a consumer surplus standard would block mergers with positive total surplus.⁶⁴ Farrell and Katz note the absence of research attempting to quantify the relative frequency with which each case may occur⁶⁵ and conclude that “we believe one should not too confidently advocate either a total surplus or a consumer surplus prosecutorial and judicial standard.”⁶⁶ Neven and Roller (2005) are similarly agnostic to the appropriate standard, finding that neither standard strictly dominates the other when the institutional environment in which the antitrust agency operates is considered.⁶⁷

75. According to my instructions:

- (a) The Tribunal must not grant authorisation in relation to a proposed acquisition of shares or assets unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to occur (cf. *Competition and Consumer Act 2010* (Cth), s 95AZH(1));
- (b) The Tribunal assesses whether there is likely to be such a public benefit by weighing the public benefits and detriments with the proposed acquisition, compared to the likely future without the proposed acquisition;
- (c) A public benefit is anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal

62 J. Farrell and M. Katz, op. cit., p. 4.

63 See J. Farrell and M. Katz, op. cit., p. 15.

64 See J. Farrell and M. Katz, op. cit., p. 17.

65 See J. Farrell and M. Katz, op. cit., p. 22.

66 See J. Farrell and M. Katz, op. cit., p. 28.

67 D. Neven & L.-H. Röller, “Consumer surplus vs. welfare standard in a political economy model of merger control,” *International Journal of Industrial Organization*, 2005, pp. 829-848.

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elements (in the context of the Competition and Consumer Act) the achievement of the economic goals of efficiency and progress;

(d) A public benefit needs to be of substance and durable. The weight given to particular benefits may vary depending on the extent to which the Australian community is able to take advantage of them;

(e) A public detriment primarily includes the detriments flowing from a lessening of competition as a result of the proposed acquisition, but can include detriments not associated with a lessening of competition.⁶⁸

76. In the final analysis a total surplus standard is more consistent with assessing all of the benefits and detriments associated with a proposed acquisition than a consumer surplus standard. Total surplus considers the impacts on both firms and consumers. A total surplus standard may be particularly useful in cases in which precise quantitative measurement of benefits may be difficult, but there are likely to be significant indirect benefits that occur in response to the proposed merger (see Section IV.4.1 below).

IV.5.1 Merger Effects on Productivity Efficiency and Price

77. The reality of measuring merger effects in a real world setting is generally much more complex than simple supply, demand and surplus graphs might indicate because the effects illustrated by those graphs capture only the immediate internal effects (i.e., internal to the merging parties and in the absence of any second-order, etc. effects) of the proposed merger. Moreover, these graphs are fundamentally static concepts (portraying relevant measures at a single point in time). In the real world, customers and suppliers respond over time to any and all actions on the part of the merged entity, and the merged entity, in turn, responds to the actions of other parties. In economic terms, the illustration in the aforementioned Figure 2 focuses only on the first-order productive efficiency, output and price effects, while higher-order productive efficiency, output, price and dynamic efficiency effects may overwhelm these first-order effects.⁶⁹

⁶⁸ "Instruction letter - Australian Competition Tribunal merger authorisation application," 6 March 2017, p. 2.

⁶⁹ E.g., see R. Gilbert and D. Rubinfeld, "Revising the Horizontal Merger Guidelines: Lessons from the U.S. and the E.U.," in Faure, M. and Zhang, X. (eds.), *Competition Policy and Regulation: Recent Developments in China, Europe and the US*, Cheltenham, Edward Elgar, 2011; and J. Farrell and C. Shapiro, "Horizontal Mergers: An Equilibrium Analysis," *op. cit.*, pp. 107-126.

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78. First-order merger effects derive from two simple propositions. First, (as a first order effect ignoring any internal or external higher-order effects) an increase in concentration in an industry will result in an increase in market power (however trivial), which will in turn, according to economic theory, result in a price increase. Second, also as a first-order effect and operating in the opposite pricing direction, the primary justification for most mergers is that the merging parties can operate and reorganise their assets to achieve more efficient production (i.e., achieve productive efficiencies and/or increase output). In the parlance of antitrust, these effects are referred to simply as efficiencies or synergies. The latter term (synergies) is sometimes used to distinguish efficiencies that could not or would not be captured in the absence of the merger (i.e., synergies are merger-specific efficiencies).⁷⁰ An example of a non-merger specific efficiency could be the achievement of economies of scale through merger in a rapidly growing relevant market (i.e., because organic growth of individual firms might be expected, within a relatively short period of time, to achieve a similar result, at least for some market participants).⁷¹ It is generally acknowledged that efficiency effects that may be considered non-merger specific in a rapidly growing relevant market (such as economies of scale or scope) may be much more difficult to achieve through organic growth in slow growing, stable or declining markets, so the delineation of merger-specific efficiencies is, to a significant extent, context-specific.⁷²
79. However, it is generally acknowledged that some types of efficiencies are virtually always merger-specific. These include synergies that can be achieved by combining complementary assets that reside within the merger parties – assets that would be difficult for either firm to replicate but which, when combined, yield benefits in increased output and/or reduced costs.⁷³

70 E.g., J. Farrell and C. Shapiro, "Scale Economies and Synergies in Horizontal Merger Analysis," *Antitrust Law Journal*, Vol. 68, No. 3, 2001, pp. 685-710.

71 E.g., O. Williamson, "Economies as an Antitrust Defense: The Welfare Tradeoffs," *The American Economic Review*, Vol. 58, No. 1 (Mar., 1968), 18, p. 25; J. Farrell and C. Shapiro, "Scale Economies and Synergies in Horizontal Merger Analysis," *op. cit.*

72 E.g., O. Williamson, *op. cit.*, p. 25; J. Farrell and C. Shapiro, "Scale Economies and Synergies in Horizontal Merger Analysis," *op. cit.*

73 E.g., J. Farrell and C. Shapiro, "Scale Economies and Synergies in Horizontal Merger Analysis," *op. cit.*

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80. Merger-specific efficiencies can involve either productive or dynamic efficiency benefits, depending on the time horizon during which they can be achieved, with dynamic efficiency benefits measured over the longer-run (generally several years) and productive efficiency benefits over the shorter-run (e.g., a few months to a year or two).
81. Efficiency benefits operate to counteract any price increase deriving from an increase in market power because they act to reduce costs and/or increase output. There is debate among economists as to the relative influence of efficiency benefits and market power effects. Some economists hold the view that efficiency benefits must be particularly substantial to overcome market power effects, while others believe that efficiency benefits have a greater impact, particularly in the long run.⁷⁴ In any case, the influence of these two effects is context-dependent, based on the characteristics of the market at issue and higher-order response effects expected within the market.
82. However, there are formal and informal “safe harbours” in any analysis of the competitive effects of a merger (i.e., instances in which a merger is unlikely to result, on balance, in competitive detriment). For example, the U.S. DOJ and FTC have established certain ranges of market concentration and change in market concentration resulting from a merger that are considered “safe harbours” for merging firms (i.e., cases in which a challenge is declared to be “unlikely”) as well as some initial presumptions of anticompetitive harm.⁷⁵ Mergers in which productive and dynamic efficiencies are particularly substantial with no significant reduction in the competitive alternatives available to customers and/or suppliers and/or mergers for which the expected result is an increase in industry output as compared with the relevant counterfactual are also, from an economic perspective, unlikely to be viewed as anticompetitive.
83. Higher order merger effects may be as important, or even more important, than first order effects, but may be more difficult to identify and quantify. They may occur as a result of competitive responses by rivals, suppliers and/or customers or through

⁷⁴ E.g., O. Williamson, *op. cit.*, p. 25; J. Farrell and C. Shapiro, “Scale Economies and Synergies in Horizontal Merger Analysis,” *op. cit.*

⁷⁵ United States’ *Horizontal Merger Guidelines*, p. 19.

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dynamic changes (e.g., product innovations or organisational or operational changes) by market participants. For example, suppliers to the merged entity may contract directly with customers of the merged entity, thereby establishing an alternative supply chain. Alternatively, rivals may expand their product lines or the geographic coverage of their operations in response. In addition, the merged entity may be able to more effectively pursue research and development efforts than the two separate firms.⁷⁶

IV.5.2 Other Potential Merger Assessment Tests

84. As noted above in Section IV.3, in addition to the economic welfare test, a somewhat different set of tests have been proposed by some policy-makers. These other tests can be used instead of or in conjunction with tests that focus on direct measures of economic efficiency. These tests can be generally described as public interest tests and can include assessments that investigate the ability of a merger to satisfy certain public policy objectives – such as increased employment, increased export earnings or assistance toward achieving income distribution objectives.⁷⁷ Because such objectives bear no necessary relationship to achieving efficiency improvements, weighing these objectives against efficiency improvements may be difficult from an economic perspective. However, the mere fact that such objectives may be difficult to quantify and/or more difficult to weigh against the first-order effects of a merger does not render them unimportant in determining whether a merger should be allowed.

V. Economic Impact of the Proposed Acquisition

85. In this Section of my report I set forth my views regarding market definition and market impact for the proposed acquisition of Tatts Group Limited (Tatts) by Tabcorp Holdings Limited (Tabcorp). Section V.1 provides my answer to Question 3(a). Section V.2 sets forth my answer to Question 3(b) and Section V.3 sets forth my answer to Question 3(c).

76 J. Farrell and C. Shapiro, "Horizontal Mergers: An Equilibrium Analysis," *op. cit.*, p. 107; R. Gilbert and D. Rubinfeld, *op. cit.*; and D. Ridyard, "The Commission's New Horizontal Merger Guidelines: An Economic Commentary," The Global Competition Law Centre Working Papers Series, GCLC Working Paper 02/05, College of Europe, Bruges.

77 E.g., see OECD, *Policy Roundtables: Substantive Criteria used for Merger Assessment*, 2002.

V.1 Market Definition

Question c(1): What are the dimensions, and hence the definition, of the relevant market or markets that would be relevant to analysing the competitive effects of the proposed merger?

86. In order to define relevant markets, I have applied the framework identified in Section IV.2 above. Even if not explicitly stated below, this means that the market definition analysis presented here is based upon the analytical methods used to identify close substitutes for products and geography that are specified in that Section. In all cases a qualitative, rather than a purely quantitative, market definition analysis has been conducted.
87. There are five main lines of business implicated by the proposed acquisition of Tatts by Tabcorp:
- Wagering;
 - Lotteries;
 - Keno;
 - Ancillary electronic gaming machine services; and
 - Broadcasting.
88. The first three of these lines of business can be broadly designated as gambling entertainment products, while the other two constitute services provided in conjunction with gambling entertainment products and other sport-related businesses. While lines of business do not always correspond to relevant product markets for competition analysis, they often provide a reasonable starting point for market definition analysis. When starting with lines of business, however, three general (and interrelated) questions are important in deriving relevant product market boundaries:
- (a) Are there other products that would be considered as close substitutes for any or all of the business lines identified?
 - (b) Are any of the identified lines of business close substitutes in either demand or supply (or both) for any (or all) other lines of business identified?
 - (c) For any (or all) of the lines of business, are further subdivisions of that (those) line(s) of business into separate relevant markets appropriate because the line of

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business contains products that are not close substitutes for other products contained within that line of business?

89. In addition to these five lines of business, it may be desirable to evaluate the transactions for a significant input to gambling entertainment products – i.e., licences required in Australia to offer these products to the public. Licences are also required for ancillary electronic gaming machine services and would be considered as a significant input to these services.
90. In the subsections below, for reasons that will become apparent, I consider each of the five lines of business separately and define relevant product, geographic and functional markets. Also, I consider at least some aspects of transactions for licences for gambling entertainment products and ancillary electronic gaming machine services separately, even though, for the purposes of evaluating the competitive impacts of the proposed merger, I do not believe that such licences should be analysed as separate relevant market (or separate relevant markets). In my opinion, licenses are more properly considered as inputs to the broader lines of business for which they are granted by State licensing authorities. However, I provide a separate discussion of certain aspects of transactions for these licences separately mainly because the competitive implications of these licences are substantially similar in each of the relevant product and services markets. Consequently, for the purposes of presentation, it is simpler and more straightforward (and reduces the need for duplicative discussion in each of the broader markets) to consolidate the discussion of certain aspects of these licences rather than repeat this discussion in each of the market definition and market impact analyses for the separate product and service markets.

V.1.1 Licences for gambling entertainment products and ancillary electronic gaming machine services licences

91. There are essentially two types of licences that are issued for gambling entertainment products and ancillary electronic gaming machine services. First, there are exclusive and near-exclusive licenses for specific types of wagering (i.e., totalisator and retail venue wagering), lotteries, keno and for certain ancillary electronic gaming machine

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services.⁷⁸ Second, there are non-exclusive licences⁷⁹ issued for certain types of wagering product suppliers (e.g., on-course bookmakers and, in the Northern Territory, for various wagering and derivative lottery and keno products) and for at least some types of ancillary electronic gaming machine services. Businesses can substitute these non-exclusive licences, to some extent, for the exclusive and near-exclusive licences awarded for gambling entertainment products, because they enable the firms that obtain them to offer similar (and/or substitutable) gambling entertainment products as the products offered by firms that obtain exclusive or near-exclusive licences.

92. Non-exclusive licences are potentially available to any entity that can satisfy the particular State's requirements for that licence. As such they have significant similarities to many types of business licences. While they constitute a prerequisite to offering services, because they are available to all qualifying entities on a non-discriminatory basis, they are not important as a competitive factor unless the conditions under which any State may offer any licence are considered to be sufficiently onerous as to constitute a significant barrier to entry. The Assumptions I have been provided do not indicate that obtaining non-exclusive gambling entertainment product or ancillary electronic gaming machine services licences constitute a significant barrier to entry in any State and indicate that a wide variety of firms have been able to obtain such licenses.⁸⁰ Nor do the Assumptions I have been provided indicate that these circumstances are likely to change in either the factual or the counterfactual for the foreseeable future. Firms do not compete for non-exclusive licenses for certain other types of wagering products (e.g., on-course bookmaking licences) and no entities compete to supply gambling entertainment product or electronic gaming machine ancillary services licences.

⁷⁸ Licensed monitoring operators (LMOs) are issued exclusive licences in most states. See "Assumptions for Christopher Pleats kas", Tab 1 of CP-2, Assumptions 228, 233-240 and 243-247. The only state for which there is no exclusivity in fact for licences for LMOs is Queensland. The Northern Territory is categorised as having no exclusivity for licences for LMOs, but only one such licence has been awarded.

⁷⁹ For the purposes of this report the term "non-exclusive licences" excludes exclusive/near-exclusive licences (i.e., licences which are restricted to one or a very few entities).

⁸⁰ E.g., "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 51-58 and 118.

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93. Exclusive or near-exclusive licences are issued by each of the States in relation to certain wagering activities, for lotteries and keno and for certain types of ancillary electronic gaming machine services. These licences are bespoke in terms of length of licence period, in terms of the precise activities and conditions (e.g., maximum commission or “take-out” rates and payments to the State and others, such as the racing industry) for offering those activities and in terms of the financial considerations paid by the licensee.⁸¹ The licences are also bespoke in terms of geographic coverage (i.e., they are confined to the State that offers them).
94. Consequently, confining the focus to exclusive and near-exclusive licences transactions for the purposes of exploring the competitive effects of the proposed merger is appropriate. The relevant question is whether these transactions should be analysed separately from the markets in which they occur. Input markets can sometimes be a useful concept in competition analysis. However, in my opinion the bespoke nature of most of these licences and the fact that the licences are embedded within (and their price is dependent on the circumstances that characterise) the broader markets to which they relate, lead to my conclusion that it is appropriate and useful, from an economic perspective, to analyse these licences within the context of those broader markets.⁸²
95. In Section V.2.1 below, in order to avoid duplication, I discuss the general reasons why most of these licensing transactions would not be associated with significant anti-competitive effects in the gambling entertainment product markets and ancillary services market(s) compared with the counterfactual. Information on competitive effects relating to licensing transactions that is specific to each of the gambling entertainment product markets and the ancillary services market(s) is contained in the competitive effects sections for each of those markets (Sections V.2.2 through V.2.5).

⁸¹ E.g., Some of the differences across states for keno licenses are noted in “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 193-194 and 222-225.

⁸² For example, in most cases non-exclusive gambling entertainment product licences would be a substitute, albeit an imperfect one, for an exclusive gambling entertainment licence (see also Sections V.1.2 through V.1.4, in which the market boundaries for gambling entertainment products are discussed). This is one fact that is consistent with the view that the fees offered for gambling entertainment product licences are dependent on competitive conditions in the relevant markets for these products.

V.1.2 *Wagering*

96. The Assumptions that have been provided to me identify four separate classes of wagering products – totalisator, fixed odds betting, tote odds betting and betting through a betting exchange.⁸³ The Assumptions also identify various types of wagers that can be placed (e.g., win, place, quinella) and various types of events on which wagers can be placed (e.g., racing, various types of other sports events, elections).⁸⁴ Two questions that immediately arise are (1) which of these differentiated products are close substitutes (if any) and (2) are there other products (such as lotteries and keno) that are close substitutes for any (or all) of these wagering products?
97. Answering these questions in reverse order, there are fundamental differences in the demand-side characteristics between wagering products, on the one hand, and lottery and keno products, on the other hand. Wagering products enable players to use some degree of skill in the form of the application of knowledge about the objects of the wager (e.g., a race horse or a sports team) in order to inform the wager.⁸⁵ While there is an element of chance and/or uncertainty (which may be large or small, depending on the specific wager and the specific circumstances and level of knowledge available to the wager principal), over the long run, winning wagers is not entirely the result of random factors. By contrast, from the demand-side, winning bets for keno and lotteries are entirely the result of random factors.⁸⁶ While this difference does not guarantee that keno and lottery products are not close substitutes for wagering products, it does tend to be consistent with the view that they are not likely to be close substitutes from the demand side.⁸⁷

83 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 23.

84 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 64-66, 96-97 and 113.

85 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 20-22.

86 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 154 and 185.

87 The economics literature has produced somewhat mixed results in empirical studies as to whether and to what extent different gambling entertainment products are substitutes or complements or neither (e.g., see D. Elliott and J. Navin, "Has Riverboat Gambling Reduced State Lottery Revenue?" *Public Finance Review*, 30 (2002), 235; M. Kearney, "State Lotteries and Consumer Behavior," NBER Working Paper Series, Working Paper 9330, <http://www.nber.org/papers/w9330>; D. Walker and J. Jackson, "Do U.S. Gambling Industries Cannibalize Each Other?" *Public Finance Review*, 36 (3) (May 2008), 308. In my opinion, the economic evidence tends to provide support for the view that wagering products and lotteries (the most studied pairwise comparison relevant to the proposed merger) are not close substitutes. This conclusion is consistent with the qualitative demand side analysis presented above.

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98. On the supply side, I am aware of no information that indicates that either lotteries or keno games are close substitutes for wagering products. The fact that Tabcorp does not supply lottery products in Australia and that Tatts supplies keno products only in South Australia⁸⁸ tends to be consistent with the view that neither keno products nor lottery products are necessarily close economic substitutes for wagering and that there are no necessary economies scope in the joint provision of wagering products, lottery products and keno products.
99. In determining whether and to what extent the various classes of wagering products (e.g., totalisator vs fixed odds), the various types of wagers products (e.g., win vs place) and the various types of events (e.g., horse racing, dog racing, other sports and non-sports – such as election outcomes – events) on which wagering products are supplied are close substitutes (and therefore should be considered to be in the same relevant product market), four factors are most salient.
100. First, from the demand-side, in the long run, the chances of winning all types of wagers would generally be enhanced by the possession and processing of relevant information (and, indeed, the odds of winning are determined by the processing of information, either through exchanges, such as totalisator pools, or by bookmakers).⁸⁹ Therefore, all types of wagering products share some demand-side characteristics.
101. Second, from the supply side, **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]⁹⁰ The only exception is totalisator wagering products, because each state licenses just one totalisator operator. 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

88 "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 163-172, 193, 202-204 and 222-223.

89 "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 21-22.

90 "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], E.g., [TBP.001.018.5686].xls.

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wagering products, including tote odds wagering products and tend to hedge tote odds products by participating in totalisator wagering.⁹¹

102. All of these facts suggest that there are economies of scope among the various wagering products so that capabilities to offer one class, type or event category of wagering product enhance the ability of the organisation to offer the other classes, types or events wagering products to their customers. For example, from the supply-side, many of the resources – such as expertise and infrastructure (such as telecommunications and computer/Internet infrastructure) – utilised in offering one class, type and/or event of wagering product are also required to offer (and can be flexibly deployed depending on demand) for other wagering products. This, in turn, would be consistent with close supply-side substitutability across the different forms, types and events categories of wagering products. Note that, as with demand-side substitutability, supply-side substitutability need not be perfect in order that different classes, types and events wagering products be close substitutes for market definition purposes.
103. Third, these facts, combined with the fact that the organisations that offer totalisator wagering products – particularly Tabcorp and Tatts – have responded with new products to compete against corporate bookmakers, which do not offer totalisator wagering, also suggests that the different forms, types and events of wagering products are close substitutes.⁹² Moreover, the recent decline (in real terms) of totalisator wagering revenues, at the same time that the volume of wagering revenues for fixed odds and other wagering products offered by corporate bookmakers have increased significantly is also consistent with substitutability between totalisator and other forms of wagering products.⁹³ Finally, the actions by totalisator suppliers (Tabcorp and Tatts) to establish national bookmaking capabilities (for non-totalisator wagering

⁹¹ “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 40-42.

⁹² “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 43-44 and 151-153.

⁹³ “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], E.g., [TBP.001.018.5686].xls.

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products – e.g., Luxbet⁹⁴), also is consistent with close substitution between various forms, types and events categories of wagering products.⁹⁵

104. Fourth, there are data that are consistent with substitution over time across a broad wagering market. This includes competition between totalisator products and tote derivative products,⁹⁶ shifts from racing wagering to sports wagering,⁹⁷ shifts from retail venue wagering to online wagering,⁹⁸ shifts toward wagering with corporate bookmakers,⁹⁹ and shifts from totalisator wagering to fixed odds wagering.¹⁰⁰
105. The geographic extent of the wagering product market is at least national. While state licensing for totalisator and other wagering products (at fixed locations, over the telephone and over the Internet) is utilised for in-state wagering, licensing by the Northern Territory for corporate bookmakers to supply wagering products via the telephone and the Internet to customers across Australia allows bookmakers to supply wagering products nationwide.¹⁰¹ 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.¹⁰²
106. 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.

94 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 3, 10, 113 and 146.

95 “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2, Tatts Digital and Telephone Wagering Turnover FY12 to FY16 [with document identification number TAT.001.015.0804 (TBP.001.027.2115)] (which sets forth Tatts Internet and telephone wagering by state).

96 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 44.

97 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 143-144.

98 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 128-129.

99 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 133-135.

100 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 137-140.

101 E.g., “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 114-116 and 119.

102 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 101-105.

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107. There is information provided in my Assumptions that is potentially consistent with defining separate relevant markets based on a price discrimination theory (see Section V.3.3.4 above) (1) for the supply of wagering products to large punters (those who wager [HIGHLY Confidential to Tabcorp and Tatts] ██████████) and (2) for the supply of wagering products to other punters. For example, [HIGHLY Confidential to Tabcorp] ██████████
██████████
██████████.¹⁰³ The information on this point is not definitive, however. If there is a separate market for the supply of wagering products to large punters, it is almost certainly international in terms of its geographic dimension.¹⁰⁴ The geographic scope of a market for the supply of wagering services to other (i.e., non-large) punters is at least national.

V.1.3 Lotteries

108. Only one private firm – Tatts – is licensed to provide state/territory lottery products in Australia¹⁰⁵ (although at least two other firms – Lottoland and Plus Connect – either supply products whereby customers can wager on the outcome of a lottery¹⁰⁶ or provide synthetic lottery products,¹⁰⁷ and at least one other firm – Jumbo – resells Tatts lottery products and sells tickets for Australian charity-based lottery products¹⁰⁸).¹⁰⁹ As noted in Section V.1.2, lotteries are a chance-based game¹¹⁰ and, consequently, are differentiated from wagering, which, while it has an element of chance, also promotes the collection and processing of information about the participants which are the object

103 E.g., “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 106-107 and 305-306.

104 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 306.

105 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 163-170 and 172.

106 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 178-179.

107 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 183-184.

108 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 180-182.

109 In Western Australia lotteries are supplied through a government owned entity, Lotteries West (“Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 170).

110 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 154 and 160.

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of the wagers (i.e., there is an element of skill involved in wagering but not lotteries).¹¹¹

109. I am aware of no significant economies of scope between offering lottery products and the other business lines at issue in the proposed acquisition. For example, Australian state lottery products are distributed in different venues than wagering products (e.g., lottery products are generally purchased through newsagents and convenience stores, while wagering products are purchased at racetracks and other specialised wagering venues as well as by telephone), although both types of products can be purchased online.¹¹² Also, the fact that lottery products and most keno products are offered by separate firms in Australia is consistent with the view that there are no significant economies of scope between these two products. Finally, there are significant differentiating characteristics that distinguish lottery products from keno products and make it less likely that these two types of gambling entertainment products would be close substitutes. This includes the speed of the games (a few minutes for keno as compared with weekly for many lottery products¹¹³) and the size of the prize pool.¹¹⁴
110. Lottery products are licensed by the individual States and Territories purchasers in those states.¹¹⁵ Under certain circumstances, state-by-state licensing might be consistent with a state-based relevant geographic market, as the specific details of the lottery and the prize money available to winners would vary from state to state. However, the availability of online purchases would tend to undermine state-based markets because purchasers in any state would be allowed to buy lottery tickets in any other state. In addition, the licensing in the Northern Territory of Lottoland, which offers national betting on the outcome of state lotteries as well as some international lottery products,¹¹⁶ would tend to support a national market, although it is unclear how

¹¹¹ "Assumptions for Christopher Pleatskas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 21-22.

¹¹² "Assumptions for Christopher Pleatskas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 158-159, 162 and 128-129.

¹¹³ There are some lottery products that offer instant prizes. "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2, Assumption 157.

¹¹⁴ "Assumptions for Christopher Pleatskas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 162 and 188.

¹¹⁵ "Assumptions for Christopher Pleatskas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 163-170.

¹¹⁶ "Assumptions for Christopher Pleatskas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 178-179.

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significant the presence of Lottoland is in the lottery market in terms of competitive impact. Consequently, lottery products are likely a national market. I also note that the exclusive license offered in each state is consistent with a view that there are economies of scale and scope in provision of lottery products.

111. The relevant functional market is the supply of lottery products to end purchasers.

V.1.4 Keno

112. In contrast to lottery products, several private firms supply keno products in Australia. As with lottery products, keno products are a game of pure chance,¹¹⁷ so keno products are highly differentiated from wagering products. Keno products are highly differentiated from lottery products because keno products provide swift paybacks (games are run every few minutes)¹¹⁸ and because direct (as opposed to derivative) keno products can be consumed only in certain venues – casinos, clubs, hotels, TAB outlets (in certain states), and specific retail outlets (in South Australia).¹¹⁹ These facts are consistent with the view that keno products are not close substitutes for wagering products or lottery products in terms of demand-side substitutability.

113. While Tatts offers keno products in South Australia in addition to lottery products in that state, Tatts does not offer keno products in any other state.¹²⁰ This fact and the fact that several firms offer keno products but not lottery products is consistent with the view that economies of scope between keno and lottery products are not significant, which is consistent with the view that these products are not close substitutes in terms of supply-side substitutability.

114. Consequently, a relevant market for keno products that is separate from other gaming products is a reasonable inference in my opinion.

¹¹⁷ “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 185.

¹¹⁸ “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 162 and 187-188. There are some lottery products that offer instant prizes. See “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2, Assumption 157.

¹¹⁹ “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 162 and 190-191.

¹²⁰ “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 193, 203 and 222-223.

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115. In terms of the geographic scope of the market, keno products are licensed and offered to end consumers on a state-by-state basis. **[Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]¹²¹ Therefore, state-based markets are a reasonable inference. The fact that Lottoland offers derivative keno products (but not on Australian keno products) on a nationwide basis may not be a sufficient basis to expand the geographic scope of these state-based markets, although the competitive significance of Lottoland's keno products is not clear from the Assumptions provided to me.¹²²

116. The relevant functional market is the supply of keno products to end consumers.

V.1.5 Ancillary Electronic Gaming Machine Services

117. My assumptions define several types of ancillary electronic gaming machine services that have been broadly classified into five groups:

- (a) **machine manufacturing and game development:** which includes selling EGMs either directly to venues holding a gaming machine licence or to licensed resellers who on-supply to venues;
- (b) **field services:** which includes preventative and remedial repair and maintenance services in relation to EGMs;
- (c) **in-venue gaming systems:** which includes providing gaming system technology and solutions to venues holding a gaming machine licence that own or lease EGMs;
- (d) **gaming and venue services:** which includes EGM 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 gaming venue; and

¹²¹ "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 199 and 201.

¹²² "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 205 and <https://www.lottoland.com.au/kenow/help>.

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(e) **gaming monitoring**: which includes monitoring EGMs in each State and Territory (excluding the ACT) to ensure they are operating in accordance with compliance standards, as well as for taxation and research purposes.¹²³

118. Absent consideration of licensing requirements, there is likely significant overlap among these categories in terms of economies of scope in offering multiple types of services, the obvious exception being actual manufacturing of EGMs (i.e., but not including sales, distribution and financing of EGMs, capabilities for which may overlap with those for other types of electronic gaming machine services). In other words, while manufacturing of EGMs may constitute a relevant market¹²⁴ separate from all of the other ancillary electronic gaming machine services included in the categories identified above, it is possible that supply-side substitutability and economies of scope in the provision of these ancillary services would lead to a conclusion (absent consideration of licensing requirements) that there is a single relevant product market for non-manufacturing ancillary electronic gaming machine services.¹²⁵ There is insufficient information to render a definitive conclusion on this topic, however. Therefore, it may be useful to utilise alternatives that capture the range of possible market boundaries – i.e., from narrower potential markets (based on subsets of ancillary electronic gaming machine services offered) to a broad potential market (assuming all ancillary electronic gaming machine services except manufacturing of EGMs are part of one relevant market). For example, the practice by most states of issuing an exclusive licence for LMOs (Licensed Monitoring Operators) may be a factor that could be used to support a separate relevant product market for this activity.
119. In addition, the imposition of different sets of licensing requirements covering different types of services in the different states and territories may create separate relevant product markets for subsets of the ancillary electronic gaming machine services.¹²⁶ For example:

¹²³ “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 227.

¹²⁴ It is my understanding that neither Tabcorp nor Tatts participates in the EGM manufacturing market, however. Therefore, this relevant market would not be of concern in assessing the potential competitive effects of the proposed acquisition.

¹²⁵ “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 248-266.

¹²⁶ “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 226-247.

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- (a) In Queensland, it is only licensed monitoring operators (**LMO**) who can supply field services for EGMs, for which the current providers are Intecq and Maxgaming (although there are two other firms with licences to provide LMO services in Queensland).¹²⁷
 - (b) In all States and Territories apart from New South Wales, the in-venue gaming system used by the EGM must be run through a LMO's central monitoring system. In Victoria, the LMO operating the central monitoring system is obliged to facilitate all third party providers of in-venue gaming systems. In Queensland, LMOs are not obliged to facilitate third party providers of in-venue gaming systems.¹²⁸
 - (c) In Queensland, there are various types of supplier's licences including licensed monitoring operators (LMOs), major dealers (manufacturers), secondary dealers and licenced testing facility operators. Applying for these licences is managed through the Queensland Office of Liquor and Gaming Regulation.¹²⁹
 - (d) In Victoria, a LMO is not permitted to provide gaming and promotional management systems (other than pre-commitment) or testing services. Under the Victorian licensing regime, LMOs may not be able to provide other gaming services.¹³⁰
120. The fact that most states separate licensing of monitoring services from other ancillary services and/or stipulate that providers of monitoring services cannot provide certain types of other services¹³¹ may affect the scope of the product markets for ancillary electronic gaming machine services (i.e., in terms of the services included and/or the number of product markets implied). Consequently, the scope of the markets for ancillary electronic gaming machine services may vary from state-to-state, depending on regulatory regime and requirements. Moreover, the location-specific nature of some of the ancillary electronic gaming machine services (e.g., maintenance and repair of EGS equipment) may also tend to support the view that the geographic markets are relatively localised. This implies that the relevant geographic markets may be best viewed at their broadest as state-based.

127 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 228.

128 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 240.

129 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 241(d).

130 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 244.

131 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 241-245.

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121. The relevant functional markets for ancillary electronic gaming machine services are the provision of these services to gaming venues.

V.1.6 Broadcasting

122. Tabcorp offers both television and radio broadcasting services, both of which focus on racing content.¹³² The television services offer national coverage, while the radio services are provided in New South Wales and the ACT. Tatts offers radio broadcasting services that are focused on racing and provides services in Queensland, South Australia, Tasmania and the Northern Territory.¹³³

123. Given the highly differentiated nature of television broadcasting services as compared with radio broadcasting services, these two types of broadcasting services should be considered to be in separate relevant product markets.¹³⁴

124. Tabcorp's television broadcasting services are offered nationally via subscription television services. Given the nature of subscription television broadcasting, which relies on satellite distribution (either directly to end users or to cable hubs for distribution via terrestrial systems),¹³⁵ the relevant geographic market for Tabcorp's television broadcasting services is national. Given the nature of radio broadcasting, which relies on licensing of individual, localised radio transmitters, and the limited coverage (in terms of individual states and territories) for Tabcorp's and Tatts' radio broadcasting services, the relevant geographic markets for radio broadcasting services is likely state or substate areas.

132 <http://www.skyracing.com.au/index.php?component=content&Itemid=114&id=96/>

133 <http://www.radiotab.com/> and "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 3 and 13.

134 In the so-called C7 full court appeals decision (Seven Network Limited v News Limited (includes corrigendum dated 2 March 2010) [2009] FCAFC 166 (2 December 2009), paragraphs 396-406, Mansfield, Dowsett and Lander JJ noted the decision (unchallenged in the appeal) by the original court (by Justice Sackville) that broadcasting markets could not be subdivided into sports channels vs non-sports channels as a result of supply-side substitutability. Similar reasoning as was accepted in that case would apply to radio broadcasting. (<http://www.austlii.edu.au/au/cases/cth/FCAFC/2009/166.html> for the appeals decision and <http://www.austlii.edu.au/au/cases/cth/FCA/2007/1062.html> for the original decision).

135 <http://www.skyracing.com.au/index.php?component=content&Itemid=91&id=89>

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125. The relevant functional market for both types of broadcasting services is distribution to end users.

V.1.7 Conclusions on Market Definition

126. For the purpose of assessing the competitive effects of the proposed acquisition of Tatts by Tabcorp, there are three separate relevant product markets for gambling entertainment products offered to consumers that enable those consumers to place bets on outcomes. The first product market is the (at least) national market for the supply of wagering products to end customers. It is possible that this market for wagering products could be further subdivided, based on a price discrimination theory, into separate markets for large punters and other punters, but the information provided is not definitive for this purpose. I will analyse competitive effects for both possibilities.

127. The second product market is the national market for the supply of lottery products to end customers. The third set of product markets are the state-based markets for keno products. The functional level for each of these product markets is the supply of products to end consumers. Within each of these product markets, exclusive and/or near-exclusive licences and non-exclusive licences are an input factor that should be considered in applying the Public Benefits test.

128. In addition to these markets, the market (or markets) for the supply of ancillary electronic gaming machine services (excluding the manufacturing of EGM equipment) to gaming venues is (are) relevant market(s) of interest. It is unclear based on the information provided whether this market should be defined based on individual ancillary electronic gaming machine services, subsets of ancillary electronic gaming machine services or all ancillary electronic gaming machine services combined, although there is some information that is consistent with defining separate, state-based markets for LMO services (in part because exclusive or near-exclusive licences are required to offer this service). Therefore, it may be useful to assess competitive effects using both narrow and broad market definitions.

129. Finally, there are two types of broadcasting markets that are relevant to assessing the competitive effects of the proposed acquisition. These are the national market for

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television broadcasting to end consumers and the state or substate markets for radio broadcasting to end users.

V.2 Competitive Effects of the Proposed Acquisition

Question c(2): What are the likely competitive effects of the proposed merger?

130. As described in my response to Question 2b, an assessment of the competitive effects of an acquisition can appropriately consider the acquisition's impact on barriers to entry, the number and significance of competitors, output, prices and total surplus. More specifically, such an assessment would consider whether the acquisition is likely to result in a net public benefit should the acquisition be allowed to occur. It may also consider other ancillary competitive and public benefit effects, for example on the financial strength of the Australian racing industry and its continued ability to provide wagering products and other entertainment services to end consumers.
131. Potential competitive effects are assessed relative to the most likely counterfactual scenario if the acquisition does not occur. Based on the assumptions I have been provided, the counterfactual scenario if Tabcorp does not acquire Tatts is:
- (a) Absent the Proposed Merger, Tabcorp and Tatts would continue operating as independent businesses for the foreseeable future.¹³⁶
132. Given the data available to me at this time, in my opinion there is insufficient information to undertake a purely quantitative assessment of price, welfare impacts or net public benefits. Instead, I consider the likely competitive effects from a more qualitative perspective.
133. There are various factors that make specific competitive effects more or less likely to occur after an acquisition. These include market characteristics that facilitate the coordinated interaction with the other firms in the relevant market. A merger can also result in a substantial lessening of competition if the merged firm finds it profitable to

¹³⁶ "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 19.

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unilaterally elevate its price and suppress output.¹³⁷ This can occur because the merging of two horizontal competitors reduces or eliminates the competitive constraints those two firms impose upon one another. Net negative competitive effects are more likely to occur when there is insufficient competition or potential competition remaining in the market to make a unilateral price increase unprofitable. Unilateral price increases are less likely to be profitable when other firms can enter the market quickly (i.e., there are low barriers to entry) or when existing firms can quickly alter the quantity they supply to take advantage of any price increase. They are also less likely, all else equal, in markets where substitution away from the product at issue is easy. Other factors to consider when assessing the likelihood of competitive effects include (but are not necessarily limited to):

- (a) the actual and potential level of foreign-based competition in the market;
 - (b) the nature and extent of vertical integration in the market;¹³⁸ and
 - (c) the effects of regulation, including licensing activities by government agencies, on the ability of the merged entity to take unilateral action.
134. The likelihood that an acquisition will increase prices can be offset by efficiencies achieved by the merging parties. In an industry like the Australian gambling entertainment business, where (according to the assumptions I have been provided) licensing requirements are strict, licensing periods are long and the parimutuel segment of the industry is suffering from stagnant or declining revenues,¹³⁹ any economies of scale-based or operational efficiencies are more likely, all else equal, to be merger-specific because it would be difficult or even sometimes impossible to obtain such efficiencies through organic growth.
135. In the remainder of this section, I consider the competitive effects likely to occur in the relevant product markets identified in Section V.1 above.

V.2.1 Exclusive/Near Exclusive Licenses

¹³⁷ Or, in the case of an acquirer of a product, if the merged firm finds it profitable to reduce unilaterally its price and suppress output.

¹³⁸ See CCA Section 50(3); see Australian Competition and Consumer Commission, Merger Guidelines, November 2008, p. 3

¹³⁹ "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], [TBP.001.018.5686].xls.

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136. One input utilised by participants in the gambling entertainment product markets are licences. In some cases the licences are exclusive or near-exclusive, while in other cases the licences are non-exclusive. In order to avoid duplication in the analysis of competitive effects for the separate markets for gambling entertainment products identified and ancillary electronic gaming machine services in Section V.1 above, this Section sets forth some general observations on exclusive and near-exclusive licence transactions that are common to all of the these markets.
137. As far as the impact on the various gambling entertainment product and ancillary electronic gaming machine services markets, perhaps the most readily measured competitive effects relate to output (as measured by economic activity in each of the relevant markets defined in Section V.1) and price (i.e., on commission rates, which relate to the price of a wager – see Section V.2.2 below). Analysing the proposed merger's impact on licensing transactions, there appear to be no significant flow-on impacts to output or price in the relevant markets defined in Section V.1 above. In terms of output impacts, the number of licences is limited, and there is no indication that the number of licences or licensees (exclusive, near-exclusive and/or non-exclusive) would be affected by the proposed merger. More importantly from the perspective of assessing impacts on output, licensees would have the same incentives to offer gambling entertainment products in the factual and counterfactual because the proposed merger would likely not reduce competition in these markets (see also Sections V.2.2 through V.2.4 below). The proposed merger is also not likely to affect maximum commission rates, as these are established by the States (although, in both the factual and the counterfactual, competition in the provision of gambling entertainment products could result in commission rates that are lower than State-mandated maximums, an outcome that would tend to lower the price of a wager and therefore could be a procompetitive benefit).
138. Although not necessarily related to competitive outcomes in the various gambling entertainment product markets or the ancillary electronic gaming machine services market(s), effects on licence fees, while theoretically possible, are unlikely as a result

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of the proposed merger.¹⁴⁰ For example, there are at least four important reasons why declines in licence fees as a consequence of the proposed merger are unlikely for exclusive or near exclusive gambling entertainment product licences.

139. First, very few of the licences that currently exist will expire soon. Consequently, except in a few cases, the present value impacts on the proposed merger on licence fees would essentially be zero or close to zero at worst. For example:

- (a) In the wagering market, the earliest any license comes up for renewal is 2024 in Victoria, with the next earliest nearly two decades away (2035 in the Northern Territory).¹⁴¹ Moreover, it is not certain that Victoria would allow a competitive tender for its license in 2024.¹⁴² I have been asked to assume that “it is unlikely that there will be a further wagering licence issued in South Australia by 2024.”¹⁴³ In any case, the delay of at least seven years before any licence fee effect of a license renewal could occur would, absent any other considerations, imply that the present value of any such effect of the proposed acquisition would be small (i.e., given that any effect would have to be discounted by at least seven years).
- (b) In the lotteries product market, only two state licences expire prior to 2050 – Victoria in 2018 and Tasmania in 2018 and 2020.¹⁴⁴ While the Tatts’ contractual lottery licence exclusivity in Queensland expired in 2016, “[i]t is not known whether the Queensland Government is currently progressing the introduction of a second lotteries licence”.¹⁴⁵ The present value effects of the proposed merger on lotteries licence fees, therefore, would not be significant outside these three States (or two States should Queensland not end Tatts’ exclusivity). **[HIGHLY**

Confidential to Tabcorp] [REDACTED]

[REDACTED] 146

140 Even if a change in licence fees were expected, such a change would likely have no competitive implications since licence fees are a fixed cost and should not affect the marginal incentives to compete.

141 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 206-207.

142 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 207 and 213.

143 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 209.

144 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 164-169 and 217-218. The licences in Tasmania are non-exclusive.

145 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 166.

146 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 220.

Confidential Restriction on Publication Claimed

(c) In the keno product markets, most state licences do not expire until after 2030,¹⁴⁷ which implies that the present value impacts of the proposed merger on licence fees would not be significant in most States in any case. The only exceptions are Victoria in 2022 and Tasmania in 2023. Moreover, there is no guarantee that a competitive process would be employed in either of these states to award any follow-on licence.¹⁴⁸ For example, **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED].¹⁴⁹ Even if Victoria and Tasmania decide to award keno licences through a competitive process, there are multiple viable bidders for the Victoria licence,¹⁵⁰ and the incumbent in Tasmania is Federal Group, not Tabcorp or Tatts.¹⁵¹ In relation to the possible bidding for the Victoria Keno licence, in addition to the current providers of keno products in Australia (including Lottoland), it is likely that foreign corporations and foreign-owned domestic businesses as well as corporate bookmakers and ancillary electronic gaming machine services providers would participate in the bidding process for the licence (should Victoria decide to conduct competitive bidding).¹⁵²

140. Moreover, as noted particularly in the wagering market definition analysis (Section V.1.2 above), significant changes have occurred in the markets for gambling entertainment products in recent years. Over the long period until many licences are set for renewal, other significant changes may occur in the relevant gambling entertainment product markets and ancillary electronic gaming machine services markets. To the extent that such changes occur in both the factual and the counterfactual, they could have a substantial impact on licence fees.
141. Second, there are apparently significant potential competitors for licences that do come up for renewal, based on past interest and industry trends. For example, a party other than Tabcorp and Tatts expressed interest in bidding for the Victoria totalisator/retail

147 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 222-223.

148 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 225.

149 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 223.

150 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 225.

151 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 222-223.

152 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 225.

Confidential Restriction on Publication Claimed

venue licence in the past,¹⁵³ and there may be multiple other parties interested in the Victoria totalisator/retail venue licence in the future.¹⁵⁴ In the keno products markets, there are seven firms that currently hold licences in the various states.¹⁵⁵

142. For lotteries licences, there are indications that bidding for licences has been competitive. When Tatts acquired Golden Casket (the holder of the Queensland lotteries license) in 2007 the “ACCC’s market inquiries indicated that the merged entity would face competition from a number of potential competitors for the acquisition of lotteries licences, including companies with operations in other segments of the broader gambling industry, both in Australia and overseas.”¹⁵⁶ In addition, in 2010 there were several bidders for the New South Wales licence.¹⁵⁷ Finally, there are numerous substantial overseas bidders that could be expected to consider bidding for any future Australian lottery product licences.¹⁵⁸
143. The presence of significant potential competitive bidders for licences (and the incentives for the state licensing authorities to encourage wider participation in bidding) would, all else equal, tend to substantially ameliorate or, more likely, eliminate any potential for negative impacts on licence fees from the proposed merger. For example, there is evidence from the economic literature that bidding markets characterised by winner take all competition, “lumpy” competition (i.e., infrequent competition for all or a large portion of the available business) and no incumbent advantage “experience Bertrand price-setting competition, where indeed two [competitors] is enough to ensure a competitive outcome.”¹⁵⁹ These conditions prevail for the exclusive and some near-exclusive licences awarded for gambling entertainment products (that is, exclusive and

153 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 207. There were also several parties interested in the ACTTAB licence in 2014 (“Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2, Assumption 208).

154 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 215-216.

155 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 222-223.

156 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 218.

157 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 219.

158 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 221.

159 E.g., “Competition in Bidding Markets,” OECD Policy Roundtables, 2006 and P. Klemperer, “Bidding Markets,” prepared for the UK Competition Commission, June 2005.

Confidential Restriction on Publication Claimed

near-exclusive licences for gambling entertainment products and some ancillary electronic gaming machine services are awarded infrequently, are awarded for all or a large share of the available business and the State licensing authorities have the power to negate any incumbency advantage in setting their award criteria).

144. In addition, as noted above in Section V.1.1, businesses can develop and implement strategies that, to at least some extent, enable them to substitute non-exclusive licences for exclusive or near-exclusive licences. In other words, by obtaining a non-exclusive licence, businesses, for example, can offer gambling entertainment products that are close substitutes for the gambling entertainment products that are offered by exclusive licensees (see Section V.1 above). For this reason, the fees offered for exclusive or near-exclusive licences will be constrained by and will reflect the competitive conditions in the industry, which, in turn, will be affected by the number, character and competitive strategies of the non-exclusive licensees.
145. Third, the states, through their licensing activities, exercise significant countervailing power in the form of the right to set licensing conditions, establish the selection criteria and score the selection process for gambling entertainment product and ancillary electronic gaming machine services licences (including LMO licences). The states can utilise this countervailing power to incentivise additional bidders (including by non-Australian firms) and/or modify existing licenses to extend their duration under existing or modified terms, among the actions that could be used to increase competition in the gambling entertainment product markets and/or undercut any possible attempt to exercise market power by an incumbent (including establishing selection criteria that can undermine and/or complete eliminate any incumbency advantage that may exist for a particular licence).
146. This same logic applies to the potential privatisation of RWWA. While it is possible that RWWA might be privatised in the next years, the form, timing and the fact of that privatisation is uncertain (e.g., it might not involve competitive bidding at all).¹⁶⁰ The existence of several privatisation options (as well as the option the Western Australia

¹⁶⁰ "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 210-211.

Confidential Restriction on Publication Claimed

State Government has to retain RWWA if it is not satisfied with the privatisation terms offered)¹⁶¹ should ensure that a competitive market price for RWWA is obtained.¹⁶²

Moreover, the fact that **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED], should help to ensure that a competitive market price is obtained for RWWA.¹⁶³ The uncertainty as to whether RWWA would be privatised, the uncertainty as to the timing and form of privatisation, the number of privatisation options available and the number of potential bidders, is consistent with a view that the proposed acquisition would not have a significant (or possibly any) effect on the price Western Australia realises for this business.

147. Fourth, as noted above, competition from non-exclusive licensees (or even from foreign entities) will affect the prices that firms are willing to pay for exclusive licences. This is particularly salient in the case of wagering licences, but will affect the value of lottery and keno licences as well.
148. Two distinct sets of conclusions follow from this information on licensing transactions – one set relating to the impact of the proposed merger on any flow-on competitive effects from licensing transactions and the second set relating to the impact of the proposed merger on license fees the States could obtain. As to the impact of the proposed merger on licensing transactions in the relevant gambling entertainment product markets and the ancillary electronic gaming machine market(s), there appears to be no significant flow-on impact on the number of licences awarded or on the economic activity of the licensees (no output effect), nor would there be a likely effect on the maximum licence fees (price effect). Moreover, the proposed merger would not have any impact on the height of barriers to entry relating to licensing, as States control the bidding process for exclusive and near-exclusive licences and non-exclusive licences will still be available to competitors in these markets.

161 “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 210.

162 For example, the potential for an IPO for RWWA may be equivalent to having an additional bidder for the business for the purposes of establishing a price, as may be the State’s option of retaining the business if it should be dissatisfied with the price any bidder offers. (See “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2, Assumption 210.)

163 “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 210-211 and 215-216.

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149. As to the impact of the proposed merger on licensing fees, four conclusions follow. First, any potential for negative licencing fee impacts would, in most cases, not be possible for decades. Second, the countervailing power of the States, which issue licences and control the licensing process, and the existence of significant alternative potential bidders would each likely substantially ameliorate and/or eliminate any possible negative price effects of the proposed merger on these licensing transactions. Third, the value of exclusive and near-exclusive licences is affected by competition from other suppliers of gambling entertainment products that have non-exclusive licences. This competition would tend to ameliorate and/or eliminate any possible negative price effects of the proposed merger on these licensing transactions. Fourth, over the long time horizon relevant to licence renewals, significant changes have occurred and may continue to occur in the relevant markets. To the extent that such changes continue to occur in both the factual and the counterfactual, they too could have significant effects on licence fees.

V.2.2 Market for Wagering Products

150. One commonly examined indicator of the potential for a merger or acquisition to result in adverse competitive effects is the increase in market share and market concentration arising from that merger. All else equal, net negative competitive effects are more likely to occur in concentrated markets where there is insufficient competition remaining to make a unilateral price increase unprofitable or when coordinated action becomes easier because there are fewer firms.¹⁶⁴ One consequence of the proposed merger is that there would be an increase in wagering market concentration if Tabcorp is allowed to purchase Tatts compared to the counterfactual, in which they are assumed to remain as separate entities.¹⁶⁵

151. Significant changes in market concentration are useful in separating mergers that are unlikely to raise antitrust concerns from others that warrant a closer examination. However, whether potential concerns raised by an increase in market concentration are

¹⁶⁴ At best, economists can identify the conditions under which coordinated action may be facilitated. Economists have not developed reliable tools to predict when coordinated action will occur.

¹⁶⁵ "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], see [TBP.001.018.5686].xls.

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likely to occur depend on other market specific evidence. In this case, there are several facts that support the conclusion that, irrespective of an increase in market concentration, the acquisition of Tatts by Tabcorp would not result in negative competitive effects.

152. As I state in Section V.1.1 above, it is my opinion that there is one relevant product market for wagering that is national in scope. Competition in this market has been vigorous. Tabcorp and Tatts hold all of the relevant totalisator/retail venue licenses in Australia that are held by private firms (RWWA, the licensee in Western Australia, is government owned). However, pari-mutuel betting has declined significantly as a proportion of all wagering turnover in the years between FY2006 and FY2016 (from about [Confidential to Tabcorp] ██████████ of total wagering turnover to about [Confidential to Tabcorp] ██████████ as fixed odds wagering has become more popular. In addition, the share of wagering turnover accounted for by Tabcorp and Tatts combined has declined from [Confidential to Tabcorp] ██████████ of wagering turnover to [Confidential to Tabcorp] ██████████ during that time. At the same time, the share of wagering turnover accounted for by corporate bookmakers has increased from about [Confidential to Tabcorp] ██████████ to about [Confidential to Tabcorp] ██████████.¹⁶⁶ Online wagering has increased from [Confidential to Tabcorp] ██████████ of wagering turnover to [Confidential to Tabcorp] ██████████ during the same time period¹⁶⁷ and retail wagering has declined significantly during that period and is expected to continue to decline during the next eight years.¹⁶⁸ Moreover, there has been a significant shift recently among consumers to multi-homing (i.e., establishing accounts with multiple suppliers of wagering products).¹⁶⁹ This increases competitive pressure on wagering product suppliers by reducing switching costs. Finally, there has been a significant shift from racing wagering to other sports

166 "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], [TBP.001.018.5686].xls. See also Assumptions 9 and 133-142. Note that Tabcorp turnover figures include ACTTAB for FY2006 and PGI for FY2016. The inclusion of these turnover figures somewhat overstates the Tabcorp share in both years.

167 "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 128.

168 "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 128-129.

169 "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 130 and 136.

Confidential Restriction on Publication Claimed

wagering during that time (sports wagering has more than tripled in turnover and more than doubled its share of total wagering).¹⁷⁰

153. I am aware of no information that would suggest that these trends would change or that the proposed merger would materially affect the direction or magnitude of these trends. For example, the ability of corporate bookmakers providing national coverage licensed by the Northern Territory (and potentially by Tasmania) to advertise their products across Australia, all else equal, assists their efforts to increase wagering share.¹⁷¹ In addition, corporate bookmakers apparently enjoy several important competitive advantages over Tabcorp and Tatts 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.¹⁷²
154. The economic literature broadly supports the view that the “price” of a wager to the consumer is related to the ratio of the total winnings to the total betting pool (i.e., mathematically, one less the “commission” rate).¹⁷³ The actual price, as perceived by consumers, however, likely does not bear a direct relationship to this ratio. For example, prospect theory (an economic theory of the deviations from so-called “rational economic behaviour” as set forth in neoclassical economic theory) suggests that, among other things, consumers on balance are likely to misperceive the actual odds of winning a wager, particularly under the circumstance that consumers have imperfect/incomplete information.¹⁷⁴ Indeed, given the commission structure (that, on average, necessarily implies that total winnings must be lower than total wager turnover), the motivation for wagering implies that consumers must overestimate their odds of winning (i.e., the average probability estimated across all consumers placing a wager must be higher than the actual probability of winning).

170 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], [TBP.001.018.5686].xls.

171 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 59.

172 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 44, 59 and 121.

173 E.g., see K. Grote and V. Matheson, “The Economics of Lotteries: A Survey of the Literature,” College of the Holy Cross, Department of Economics, Faculty Research Series, Paper No. 11-09, August 2011, for a discussion of some of the literature on this topic.

174 E.g., see R. Thaler, *Quasi-Rational Economics*, Russell Sage Foundation, New York, 1991.

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155. Given the amount of competition in wagering market, it seems unlikely that the proposed merger would result in a price increase (e.g., an increase in the commission rates). Indeed, competition in the wagering market has led Tabcorp to consider reducing selected totalisator commission rates (i.e., reducing the price of a wager to consumers to the extent that the price of a wager is related to the commission rate). However, there are economically sound reasons that could explain why further across-the-board reductions in totalisator commission rates may not increase wagering turnover. For example, given other factors that affect the perceived price of a wager (e.g., see the immediately preceding paragraph), modest decreases in commission rates may be insufficient to significantly affect perceived price by those placing bets.
156. Taking a broad perspective, numerous substantial corporate bookmaker competitors provide significant competition to Tabcorp and Tatts. These include several foreign-based entities, such as Sportsbet, Ladbrokes, Bet365 and Unibet, as well as Australian-owned firms, such as CrownBet (which owns Betfair).¹⁷⁵ In addition, there are hundreds of on-course bookmakers that provide competition to totalisator providers in Australia (like Tabcorp and Tatts),¹⁷⁶ and Tabcorp and Tatts have lost substantial share over the past decade in the wagering market to competitors.
157. An indication of the vigorous competition between the traditional wagering products suppliers – in particular, Tabcorp and Tatts – and corporate and on-course bookmakers has been the competitive responses of Tabcorp and Tatts to this competition. Both firms have made substantial investments and introduced new products. For example, Tabcorp launched Luxbet, its own Northern Territory-licensed bookmaker in 2008, has invested heavily in upgrading its retail facilities and introduced such products as the Big6, Super Multi and Cash Out.¹⁷⁷ Responding to competition from corporate bookmakers has been particularly important for Tabcorp and Tatts because, despite their efforts to introduce new products, upgrade facilities and (for Tabcorp) launch

¹⁷⁵ “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 119-120.

¹⁷⁶ “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 118.

¹⁷⁷ “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 145-153.

Confidential Restriction on Publication Claimed

Luxbet, wagering volume at the two firms is still dominated by the declining pari-mutuel products.¹⁷⁸

158. In South Australia, the exclusivity period of Tatts' retail wagering licence expired on 10 January 2017 (the next possible end to exclusivity of a totalisator/retail venue license would be in Tasmania in 2027), but I have been asked to assume "that it is unlikely that there will be a further wagering licence issued in South Australia by 2024."¹⁷⁹ Moreover, there are sound commercial reasons for combining all of one state's totalisator volume into one license.¹⁸⁰ Indeed, both Tabcorp and Tatts currently pool totalisator wagering across multiple states because there are risk reduction and efficiency benefits from pooling.¹⁸¹ These benefits and the fact that larger pools provide larger payoffs to winning customers mean that larger pools are more attractive to those placing bets.¹⁸² Therefore, there is unlikely to be any significant anticompetitive effect from the proposed acquisition due to ending exclusivity in this totalisator/retail venue license.
159. These trends in the wagering market – both in the market overall and in the totalisator segment of the market – are consistent with the view that, from an economic perspective, there would be no significant anticompetitive effects and no net public detriments from the proposed merger on the wagering market.
160. Even if separate price discrimination markets for wagering by large punters and wagering by other punters could be supported, there is a sound economic basis to support the view that there would be no significant impact on competition in either of these markets. As to the possible national (or possibly broader) market for supply of wagering products to other (i.e., non-large) punters, all of the factors noted above if one overall wagering market existed would apply to this separate price discrimination market and would likely result in no significant anticompetitive effects and no net

178 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], [TBP.001.018.5686].xls.

179 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 206 and 209.

180 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 29-30.

181 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 29-30, 101-105 and 114.

182 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 29-30 and 105.

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public detriments from the proposed merger on this market. As to the possible international market for the supply of wagering products to large punters, the international wagering opportunities available to large punters, the competition from corporate bookmakers in Australia and the competition from other (non-totalisator) betting opportunities both inside and outside Australia would likely provide a sufficient competitive constraints on the proposed merged entity so that there would be no significant anticompetitive effects and no net public detriments from the proposed merger on large punters.¹⁸³

V.2.3 *Market for Lottery Products*

There is only one private firm in Australia licensed by the states and territories to offer lottery products – Tatts (in Western Australia the state government conducts lotteries through the government owned Lotteries West).¹⁸⁴ In assessing competitive effects, it is important to note that Tabcorp does not have a lotteries business. Consequently, the proposed acquisition would not result in any increase in concentration in the lotteries market.

161. An important consideration in assessing competitive effects is the fact that competition in the form of resellers of Tatts lottery products and from other lottery products will continue to provide competition.¹⁸⁵ For example, Jumbo resells both Tatts lottery products and charity lottery products.¹⁸⁶ Also, Lottoland allows betting on Australian lottery outcomes and on international lotteries, and Plus Connect provides synthetic lottery products.¹⁸⁷
162. These data are consistent with the view that there would be no significant impact on competition and there would not be net negative public benefits in the lottery product market as a result of the acquisition of Tatts by Tabcorp.

183 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 151, 306 and 307.

184 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 163-170 and 218.

185 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 178-184 and 220.

186 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 180-182.

187 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 178-179 and 183-184.

V.2.4 Market for Keno Products

163. Currently, seven firms, including both Tabcorp and Tatts, hold licences to offer keno products in Australian venues (including ClubKeno, which jointly holds the New South Wales license with Tabcorp).¹⁸⁸ In addition, Lottoland offers derivative foreign keno products.¹⁸⁹ Tatts and Tabcorp do not compete in any state. Although Tatts holds a lotteries licence that allows it to offer keno products in Victoria through 2018 and Tabcorp holds a licence in Victoria that expires in 2022, Tatts has not used its Victoria licence to offer any keno products in that state.¹⁹⁰ **[HIGHLY Confidential to Tatts]**

[REDACTED]

[REDACTED] 191

164. Also, as noted above in Section V.2.1, the long term nature of keno licences, state control of the licensing process, including selection criteria and the bidding and evaluation process, can ensure that competitive benefits of competition for the market in the various states among the many current and potential licence-holders are maintained.

165. Therefore, the number of current market participants, the number and significance of potential market participants, the fact that Tabcorp and Tatts do not compete in any state, the long-term nature of most of the state keno licences and state control over the licensing process suggest that the proposed acquisition would not have a significant impact on competition in the supply of keno products and would not result in net public detriments. The competition in keno products from Lottoland and Plus Connect would also support this conclusion, although the competitive significance of these firms is not clear at this time.

V.2.5 Market or Markets for Ancillary Electronic Gaming Machine Services

188 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 222-223.

189 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 205.

190 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 202-204 and 222-225.

191 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 204.

Confidential Restriction on Publication Claimed

166. As noted in the market definition analysis of ancillary electronic gaming machine services (Section V.1.5 above), there is insufficient information to determine whether there is one relevant market or several relevant markets for these services (although manufacturing of EGMs, an activity in which neither Tabcorp nor Tatts participates, appears to constitute a separate relevant market).¹⁹² Both Tabcorp and Tatts provide multiple ancillary services in multiple states.¹⁹³ However, aside from the provision of LMO services, which are discussed separately below, there appear to be multiple actual and potential competitors that also provide and/or could provide at least most of these services.¹⁹⁴ For example, Tabcorp provides field services for electronic gaming machines¹⁹⁵ to venues in New South Wales and Victoria that have broader arrangements with Tabcorp Gaming Services, states in which a number of providers supply such services in competition with Tabcorp.¹⁹⁶
167. The one exception to this statement occurs in relation LMO services. This service appears to be closely regulated at the state level and all but two States and Territories offer an exclusive licence for the provision of LMO services (precluding competition in the provision of this service). Moreover, one of the two jurisdictions (the Northern Territory) that ostensibly provides competitive licences has issued just one licence.¹⁹⁷ Tatts provides LMO services in three of these states and has been considering acquisition of a firm that provides LMO services in a fourth state.¹⁹⁸
168. In the remaining state – Queensland – four LMO licenses have been issued, one to an entity owned by Tatts (Maxgaming Qld Pty Ltd [Maxgaming]) and one to an entity owned by Tabcorp (Odyssey Services Pty Ltd [Odyssey]), owned by Intecq Limited,

192 See Section V.1.4 above.

193 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 228, 235-258 and 259-263.

194 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 228 and 264-266.

195 Field services “involves services, repairs and maintenance of EGMs.” See “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 250.

196 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 228.

197 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 245.

198 “Assumptions for Christopher Pleatskas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 263.

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which was acquired by Tabcorp in December 2016).¹⁹⁹ The proposed merger, therefore, would, absent any further action by Tabcorp, reduce the number of LMO suppliers in Queensland from four to three. However, **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]²⁰⁰ Consequently, there would be no change in the number of competitors as a result of the proposed merger or in the shares of those competitors.

169. In addition, there are two remaining recent entrant licensees (Utopia Gaming Services Pty Ltd [Utopia] and PVS Australia Pty Ltd [PVS]) that are not involved in the proposed merger. Although, they appear to account for little or no share of LMO services supplied in that State,²⁰¹ based on the Assumptions provided to me, Utopia and PVS, “having invested in the capability to acquire a licence and to provide monitoring services in Queensland, will compete to acquire customers and grow their respective shares of monitoring services in Queensland in the near future.”²⁰² Consequently, in addition to **[HIGHLY Confidential to Tabcorp]** [REDACTED], they could provide an effective competitive constraint on the proposed merged entity in the provision of LMO services in Queensland. Furthermore, Queensland could license additional parties to provide LMO services in that State, and there are several firms with the capabilities to provide these services.²⁰³ Any new licensees could also constrain the proposed merger entity in the provision of these services. Therefore, the proposed merger would not have any significant competitive impact on the provision of LMO services in Queensland.

170. In summary, if there is one overall relevant market for all electronic gaming machine ancillary services, then it is unlikely that that the proposed merger will result in any significant competitive detriment. If, in the alternative, multiple separate relevant

199 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 245, 248 and 254.

200 “Assumptions for Christopher Pleatsikas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 297. See also Assumption 298.

201 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 245, 258, 261 and 264.

202 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 246.

203 “Assumptions for Christopher Pleats kas”, Tab 1 of CP-2 [TBP.001.027.1829], Assumption 247.

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markets for these ancillary services exist, defined along the lines of the separate services provided, then it also appears unlikely that there would be a competitive detriment associated with the proposed merger in the provision of the these services.

V.2.6 *Broadcasting Markets*

171. Two types of broadcasting services markets are implicated by the proposed merger – radio and television.²⁰⁴ Two facts render any significant competitive impact in these markets unlikely. First, Tabcorp and Tatts do not compete with one another in any relevant broadcasting market. Second, in my experience, there are several potential competitors in both types of markets that could offer to compete if the merged entity were to offer subcompetitive prices for the relevant broadcast rights (e.g., existing radio broadcasters or video broadcasters that have access to pay television bandwidth).

V.2.7 *Conclusion on Competitive Effects*

172. In none of the five categories of relevant markets implicated by the proposed merger is a significant impact on competition likely.

V.3 **Question c(3): What are the likely effects of the proposed merger on total economic welfare?**

173. There are three types of quantifiable synergy-related (merger-specific) benefits that are projected to result from the proposed merger. These are:

- (a) Cost and capital expenditure (capex) synergies;
- (b) Revenue synergies; and
- (c) Flow-through synergies to other parties, such as increased payments to the racing industry and to the States and Federal governments.

174. In addition, there are less quantifiable, but potentially significant other benefits that are expected from the proposed merger. Both the estimates of quantifiable benefits and the categories of non-quantifiable benefits are discussed below.

175. Synergies resulting from cost and capex savings are estimated to be **[Confidential to Tabcorp]** [REDACTED] per annum, with **[Confidential to Tabcorp]** [REDACTED]

²⁰⁴ See Section V.1.5 above.

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accruing to the proposed merged entity and the remainder contributed to the NSW and Victoria racing industry bodies.²⁰⁵ These synergies are expected after one-off integration costs of [Confidential to Tabcorp] [REDACTED] are incurred, and the full amount of annual savings are expected to occur in the third year after integration and will continue to occur indefinitely thereafter. The magnitude of these savings is significant in present value terms. If one assumes no escalation in benefits resulting from inflation, all integration costs would be incurred in the first year, a discount rate of 10 percent and an equal phase in of benefits over the first three years, the present value over 10 years of these synergies to the proposed merged entity would be more than [Confidential to Tabcorp] [REDACTED]²⁰⁶ and the present value of the additional payments to the NSW and Victoria racing industry bodies would be more than [Confidential to Tabcorp] [REDACTED].

176. The revenue benefits to the proposed merged entity are also substantial. These are derived from improved fixed odds performance and a series of proposed business improvements.²⁰⁷ An investment of about [Confidential to Tabcorp] [REDACTED] will yield an increase in annual turnover on wagering of about [Confidential to Tabcorp] [REDACTED] in the third year after the proposed merger is completed and an increase in revenue for the proposed merged entity of about [Confidential to Tabcorp] [REDACTED], again in the third year after the proposed merger is completed. While it is possible that some of this increase would eventually be realised in the counterfactual, it is unlikely that the full magnitude of these increases in wagering turnover and revenue would be achieved in the counterfactual.²⁰⁸
177. Tabcorp also projects that, by the third year, it can annually generate an additional [Confidential to Tabcorp] [REDACTED] in revenue (from a [Confidential to

²⁰⁵ "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 270-275.

²⁰⁶ If one assumes that the [Confidential to Tabcorp] [REDACTED] annual reduction in "reduced variable costs" only represents a transfer from suppliers to Tabcorp (see "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 273), the present value of the synergy benefits would still be more than [Confidential to Tabcorp] [REDACTED].

²⁰⁷ "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 276-286.

²⁰⁸ "Assumptions for Christopher Pleatsikas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 286.

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Tabcorp [redacted] increase in annual turnover) in Tatts' South Australian keno business.²⁰⁹ The costs to achieve this result are estimated to be modest – a one-time investment of **[Confidential to Tabcorp]** [redacted] and an increase in on-going costs of **[Confidential to Tabcorp]** [redacted]. **[Confidential to Tabcorp]** [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

178. Furthermore, Tabcorp estimates that the racing industry would benefit by **[Confidential to Tabcorp]** [redacted] annually from the proposed merger.²¹⁰ These increased contributions to the racing industry are important to maintaining the quality of the products that the industry supplies.²¹¹ In addition, other sporting bodies would receive modest increases in contributions, while there would be substantial increases in taxes and other fees paid to governments and to retail wagering venues.²¹² Moreover, increased opportunities for totalisator pooling may also provide significant benefits to the racing industry.²¹³

179. Shifts in the share of wagering accounted for by the proposed merged entity²¹⁴ could also provide some direct benefits. For example, to the extent that the shift was the result of some loss in share (compared to the counterfactual) by corporate bookmakers, there could be benefits in the form of increased payments per dollar of wager turnover to the racing industry (since Tabcorp and Tatts contribute a greater portion of their revenues to the racing industry than corporate bookmakers²¹⁵) and increased retention

209 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 287-291.

210 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 296.

211 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 84-86 and 89.

212 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 292.

213 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 101-105 and 293-295.

214 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumption 285.

215 "Assumptions for Christopher Pleats kas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 43 and 121.

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of profits within Australia (since Tabcorp is Australian-based, while some corporate bookmakers are owned by foreign-based entities²¹⁶).

180. The higher-order benefits from these synergies would likely be substantial, even if they are more difficult to quantify. Increases in tax and other revenues to the States and the Federal government could fund a variety of programs and/or reduce taxes on other products and services. Increases in payments to the racing industry and gaming venues would have the effect of increasing employment both at these venues and at suppliers to these venues. To the extent that the proposed merged entity would, over the long term, increase the share (compared with the counterfactual) of Australian-owned suppliers of gambling entertainment products, this may benefit the Australian economy.

V.3.1 Conclusion on Welfare Effects

181. The welfare effects of the proposed merger as measured by the increase in merger-specific synergies (i.e., efficiency improvements), increases in payments to the racing industry and other sports bodies, increases in tax payments, increases in wagering activities and higher-order (indirect) employment and business benefits are significantly positive. Given that there are unlikely to be any significant adverse competitive consequences from the proposed merger (see Section V.2.7 above), in my opinion the public benefits of the proposed merger should be positive.

²¹⁶ "Assumptions for Christopher Pleatskas", Tab 1 of CP-2 [TBP.001.027.1829], Assumptions 120-121.

VI. Declaration

183. I have made all the inquiries that I believe are desirable and appropriate and no matters of significance that I regard as relevant have, to my knowledge, been withheld from the Court.



Dr Christopher Jon Pleatsikas

8 March 2017

Date

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT of 2017

Tabcorp Holdings Limited (Applicant)

RE: PROPOSED ACQUISITION OF TATTS GROUP LIMITED BY TABCORP HOLDINGS LIMITED

EXHIBIT CERTIFICATE

This is the exhibit marked "**CP-1**" to the expert report of **CHRISTOPHER PLEATSIKAS** dated **8 March 2017**.

Exhibit CP-1

Filed on behalf of Tabcorp Holdings Limited (Applicant)

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RE: Proposed Acquisition of
Tatts Group Limited by
Tabcorp Holdings Limited

Tab	Description	Document ID
1	Curriculum Vitae of Christopher Pleatsikas	TBP.001.027.6266
2	Letter of Engagement from Herbert Smith Freehills to Christopher Pleatsikas dated 1 December 2016	TBP.001.027.5174
3	Expert Evidence Practice Note (GPN-EXPT)	TBP.001.027.2039
4	Letter of Instructions from Herbert Smith Freehills to Christopher Pleatsikas dated 6 March 2017	TBP.001.029.0001
5	Tabcorp ASX Release regarding proposed merger with Tatts Group Holdings dated 19 October 2016	TBP.011.001.0110
6	Presentation released to the ASX dated 19 October 2016	TBP.006.001.0121
7	Merger Implementation Deed	TBP.004.011.0610



EXPERT EVIDENCE PRACTICE NOTES (GPN-EXPT)

General Practice Note

1. INTRODUCTION

- 1.1 This practice note, including the *Harmonised Expert Witness Code of Conduct* (“**Code**”) (see **Annexure A**) and the *Concurrent Expert Evidence Guidelines* (“**Concurrent Evidence Guidelines**”) (see **Annexure B**), applies to any proceeding involving the use of expert evidence and must be read together with:
- (a) the Central Practice Note (CPN-1), which sets out the fundamental principles concerning the National Court Framework (“**NCF**”) of the Federal Court and key principles of case management procedure;
 - (b) the Federal Court of Australia Act 1976 (Cth) (“**Federal Court Act**”);
 - (c) the *Evidence Act 1995* (Cth) (“**Evidence Act**”), including Part 3.3 of the Evidence Act;
 - (d) Part 23 of the *Federal Court Rules 2011* (Cth) (“**Federal Court Rules**”); and
 - (e) where applicable, the Survey Evidence Practice Note (GPN-SURV).
- 1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

2. APPROACH TO EXPERT EVIDENCE

- 2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some circumstances an expert may be appointed as an independent adviser to the Court.
- 2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the *Evidence Act*).
- 2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:
- (a) to be admissible in a proceeding, any such evidence must be relevant (s 56 of the *Evidence Act*); and
 - (b) even if relevant, any such evidence, may be refused to be admitted by the Court if its probative value is outweighed by other considerations such as the evidence

being unfairly prejudicial, misleading or will result in an undue waste of time (s 135 of the Evidence Act).

- 2.4 An expert witness' opinion evidence may have little or no value unless the assumptions adopted by the expert (ie. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.
- 2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, to at all times comply with their duties associated with the overarching purpose in the Federal Court Act (see ss 37M and 37N).

3. INTERACTION WITH EXPERT WITNESSES

- 3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.
- 3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice note that obliges a party to embark on the costly task of engaging a "consulting expert" in order to avoid "contamination" of the expert who will give evidence. Indeed the Court would generally discourage such costly duplication.
- 3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness¹ should, at the earliest opportunity, be provided with:
 - (a) a copy of this practice note, including the Code (see Annexure A); and
 - (b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.
- 3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

¹ Such a witness includes a "Court expert" as defined in r 23.01 of the Federal Court Rules. For the definition of "expert", "expert evidence" and "expert report" see the Dictionary, in Schedule 1 of the Federal Court Rules.

4. ROLE AND DUTIES OF THE EXPERT WITNESS

- 4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.
- 4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.
- 4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

Harmonised Expert Witness Code of Conduct

- 4.4 Every expert witness giving evidence in this Court must read the *Harmonised Expert Witness Code of Conduct* (attached in Annexure A) and agree to be bound by it.
- 4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

5. CONTENTS OF AN EXPERT'S REPORT AND RELATED MATERIAL

- 5.1 The contents of an expert's report must conform with the requirements set out in the Code (including clauses 3 to 5 of the Code).
- 5.2 In addition, the contents of such a report must also comply with r 23.13 of the Federal Court Rules. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of r 23.13 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:
- (a) acknowledge in the report that:
 - (i) the expert has read and complied with this practice note and agrees to be bound by it; and
 - (ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;
 - (b) identify in the report the questions that the expert was asked to address;
 - (c) sign the report and attach or exhibit to it copies of:
 - (i) documents that record any instructions given to the expert; and

- (ii) documents and other materials that the expert has been instructed to consider.

5.3 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

6. CASE MANAGEMENT CONSIDERATIONS

6.1 Parties intending to rely on expert evidence at trial are expected to consider between them and inform the Court at the earliest opportunity of their views on the following:

- (a) whether a party should adduce evidence from more than one expert in any single discipline;
- (b) whether a common expert is appropriate for all or any part of the evidence;
- (c) the nature and extent of expert reports, including any in reply;
- (d) the identity of each expert witness that a party intends to call, their area(s) of expertise and availability during the proposed hearing;
- (e) the issues that it is proposed each expert will address;
- (f) the arrangements for a conference of experts to prepare a joint-report (see Part 7 of this practice note);
- (g) whether the evidence is to be given concurrently and, if so, how (see Part 8 of this practice note); and
- (h) whether any of the evidence in chief can be given orally.

6.2 It will often be desirable, before any expert is retained, for the parties to attempt to agree on the question or questions proposed to be the subject of expert evidence as well as the relevant facts and assumptions. The Court may make orders to that effect where it considers it appropriate to do so.

7. CONFERENCE OF EXPERTS AND JOINT-REPORT

7.1 Parties, their legal representatives and experts should be familiar with aspects of the Code relating to conferences of experts and joint-reports (see clauses 6 and 7 of the Code attached in Annexure A).

7.2 In order to facilitate the proper understanding of issues arising in expert evidence and to manage expert evidence in accordance with the overarching purpose, the Court may require experts who are to give evidence or who have produced reports to meet for the purpose of identifying and addressing the issues not agreed between them with a view to reaching agreement where this is possible ("**conference of experts**"). In an appropriate case, the Court may appoint a registrar of the Court or some other suitably qualified person ("**Conference Facilitator**") to act as a facilitator at the conference of experts.

- 7.3 It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the Court whether a conference of experts and/or a joint-report by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceeding. The parties should discuss the necessary arrangements for any conference and/or joint-report. The arrangements discussed between the parties should address:
- (a) who should prepare any joint-report;
 - (b) whether a list of issues is needed to assist the experts in the conference and, if so, whether the Court, the parties or the experts should assist in preparing such a list;
 - (c) the agenda for the conference of experts; and
 - (d) arrangements for the provision, to the parties and the Court, of any joint-report or any other report as to the outcomes of the conference (“**conference report**”).

Conference of Experts

- 7.4 The purpose of the conference of experts is for the experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying matters and issues in a proceeding about which the experts agree, partly agree or disagree and why. For this reason the conference is attended only by the experts and any Conference Facilitator. Unless the Court orders otherwise, the parties' lawyers will not attend the conference but will be provided with a copy of any conference report.
- 7.5 The Court may order that a conference of experts occur in a variety of circumstances, depending on the views of the judge and the parties and the needs of the case, including:
- (a) while a case is in mediation. When this occurs the Court may also order that the outcome of the conference or any document disclosing or summarising the experts' opinions be confidential to the parties while the mediation is occurring;
 - (b) before the experts have reached a final opinion on a relevant question or the facts involved in a case. When this occurs the Court may order that the parties exchange draft expert reports and that a conference report be prepared for the use of the experts in finalising their reports;
 - (c) after the experts' reports have been provided to the Court but before the hearing of the experts' evidence. When this occurs the Court may also order that a conference report be prepared (jointly or otherwise) to ensure the efficient hearing of the experts' evidence.
- 7.6 Subject to any other order or direction of the Court, the parties and their lawyers must not involve themselves in the conference of experts process. In particular, they must not seek to encourage an expert not to agree with another expert or otherwise seek to influence the outcome of the conference of experts. The experts should raise any queries they may have in relation to the process with the Conference Facilitator (if one has been appointed) or in

accordance with a protocol agreed between the lawyers prior to the conference of experts taking place (if no Conference Facilitator has been appointed).

- 7.7 Any list of issues prepared for the consideration of the experts as part of the conference of experts process should be prepared using non-tendentious language.
- 7.8 The timing and location of the conference of experts will be decided by the judge or a registrar who will take into account the location and availability of the experts and the Court's case management timetable. The conference may take place at the Court and will usually be conducted in-person. However, if not considered a hindrance to the process, the conference may also be conducted with the assistance of visual or audio technology (such as via the internet, video link and/or by telephone).
- 7.9 Experts should prepare for a conference of experts by ensuring that they are familiar with all of the material upon which they base their opinions. Where expert reports in draft or final form have been exchanged prior to the conference, experts should attend the conference familiar with the reports of the other experts. Prior to the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

Joint-report

- 7.10 At the conclusion of the conference of experts, unless the Court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint-report. The joint-report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge or registrar.
- 7.11 In some cases (and most particularly in some native title cases), depending on the nature, volume and complexity of the expert evidence a judge may direct a registrar to draft part, or all, of a conference report. If so, the registrar will usually provide the draft conference report to the relevant experts and seek their confirmation that the conference report accurately reflects the opinions of the experts expressed at the conference. Once that confirmation has been received the registrar will finalise the conference report and provide it to the intended recipient(s).

8. CONCURRENT EXPERT EVIDENCE

- 8.1 The Court may determine that it is appropriate, depending on the nature of the expert evidence and the proceeding generally, for experts to give some or all of their evidence concurrently at the final (or other) hearing.
- 8.2 Parties should familiarise themselves with the *Concurrent Expert Evidence Guidelines* (attached in Annexure B). The Concurrent Evidence Guidelines are not intended to be exhaustive but indicate the circumstances when the Court might consider it appropriate for

concurrent expert evidence to take place, outline how that process may be undertaken, and assist experts to understand in general terms what the Court expects of them.

- 8.3 If an order is made for concurrent expert evidence to be given at a hearing, any expert to give such evidence should be provided with the Concurrent Evidence Guidelines well in advance of the hearing and should be familiar with those guidelines before giving evidence.

9. FURTHER PRACTICE INFORMATION AND RESOURCES

- 9.1 Further information regarding Expert Evidence and Expert Witnesses is available on the Court's website.
- 9.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court's website. This information may be particularly helpful for litigants who are representing themselves.

J L B ALLSOP
Chief Justice
25 October 2016

Annexure A

HARMONISED EXPERT WITNESS CODE OF CONDUCT²

APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:
 - (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
 - (b) to give opinion evidence in proceedings or proposed proceedings.

GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
 - (a) the name and address of the expert;
 - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
 - (e) the reasons for and any literature or other materials utilised in support of such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
 - (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the

² Approved by the Council of Chief Justices' Rules Harmonisation Committee

- knowledge of the expert, been withheld from the Court;
- (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
 - (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
 - (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION

- 4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
- 5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

DUTY TO COMPLY WITH THE COURT'S DIRECTIONS

- 6. If directed to do so by the Court, an expert witness shall:
 - (a) confer with any other expert witness;
 - (b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
 - (c) abide in a timely way by any direction of the Court.

CONFERENCE OF EXPERTS

- 7. Each expert witness shall:
 - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
 - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

ANNEXURE B

CONCURRENT EXPERT EVIDENCE GUIDELINES

APPLICATION OF THE COURT'S GUIDELINES

1. The Court's Concurrent Expert Evidence Guidelines ("**Concurrent Evidence Guidelines**") are intended to inform parties, practitioners and experts of the Court's general approach to concurrent expert evidence, the circumstances in which the Court might consider expert witnesses giving evidence concurrently and, if so, the procedures by which their evidence may be taken.

OBJECTIVES OF CONCURRENT EXPERT EVIDENCE TECHNIQUE

2. The use of concurrent evidence for the giving of expert evidence at hearings as a case management technique³ will be utilised by the Court in appropriate circumstances (see r 23.15 of the *Federal Court Rules 2011* (Cth)). Not all cases will suit the process. For instance, in some patent cases, where the entire case revolves around conflicts within fields of expertise, concurrent evidence may not assist a judge. However, patent cases should not be excluded from concurrent expert evidence processes.
3. In many cases the use of concurrent expert evidence is a technique that can reduce the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become "opposing experts" rather than independent experts assisting the Court. It can elicit more precise and accurate expert evidence with greater input and assistance from the experts themselves.
4. When properly and flexibly applied, with efficiency and discipline during the hearing process, the technique may also allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. This can also allow for the key evidence to be given at the same time (rather than being spread across many days of hearing); permit the judge to assess an expert more readily, whilst allowing each party a genuine opportunity to put and test expert evidence. This can reduce the chance of the experts, lawyers and the judge misunderstanding the opinions being expressed by the experts.
5. It is essential that such a process has the full cooperation and support of all of the individuals involved, including the experts and counsel involved in the questioning process. Without that cooperation and support the process may fail in its objectives and even hinder the case management process.

³ Also known as the "hot tub" or as "expert panels".

CASE MANAGEMENT

6. Parties should expect that, the Court will give careful consideration to whether concurrent evidence is appropriate in circumstances where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Whether experts should give evidence concurrently is a matter for the Court, and will depend on the circumstances of each individual case, including the character of the proceeding, the nature of the expert evidence, and the views of the parties.
7. Although this consideration may take place at any time, including the commencement of the hearing, if not raised earlier, parties should raise the issue of concurrent evidence at the first appropriate case management hearing, and no later than any pre-trial case management hearing, so that orders can be made in advance, if necessary. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:
 - (a) the agenda;
 - (b) the order and manner in which questions will be asked; and
 - (c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.
8. At the same time, and before any hearing date is fixed, the identity of all experts proposed to be called and their areas of expertise is to be notified to the Court by all parties.
9. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

CONFERENCE OF EXPERTS & JOINT-REPORT OR LIST OF ISSUES

10. The process of giving concurrent evidence at hearings may be assisted by the preparation of a joint-report or list of issues prepared as part of a conference of experts.
11. Parties should expect that, where concurrent evidence is appropriate, the Court may make orders requiring a conference of experts to take place or for documents such as a joint-report to be prepared to facilitate the concurrent expert evidence process at a hearing (see Part 7 of the Expert Evidence Practice Note).

PROCEDURE AT HEARING

12. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.
13. At the hearing itself, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.
14. Without intending to be prescriptive of the procedure, parties should expect that, when evidence is given by experts in concurrent session:

- (a) the judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;
 - (b) the experts will be grouped and called to give evidence together in their respective fields of expertise;
 - (c) the experts will take the oath or affirmation together, as appropriate;
 - (d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom, including (if necessary) at the bar table;
 - (e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;
 - (f) the judge will guide the process by which evidence is given, including, where appropriate:
 - (i) using any joint-report or list of issues as a guide for all the experts to be asked questions by the judge and counsel, about each issue on an issue-by-issue basis;
 - (ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;
 - (iii) inviting legal representatives to identify the topics upon which they will cross-examine;
 - (iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and
 - (v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.
15. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the judge.
16. The concurrent session should allow for a sensible and orderly series of exchanges between expert and expert, and between expert and lawyer. Where appropriate, the judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.
17. Where any issue involves only one expert, the party wishing to ask questions about that issue should let the judge know in advance so that consideration can be given to whether

arrangements should be made for that issue to be dealt with after the completion of the concurrent session. Otherwise, as far as practicable, questions (including in the form of cross-examination) will usually be dealt with in the concurrent session.

18. Throughout the concurrent evidence process the judge will ensure that the process is fair and effective (for the parties and the experts), balanced (including not permitting one expert to overwhelm or overshadow any other expert), and does not become a protracted or inefficient process.



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Christopher Pleatsikas
Vice President of Antitrust & Competition
Charles River Associates
Suite 26, 5335 College Avenue
Oakland, California
United States of America 94618-2804
cpleatsikas@crai.com

1 December 2016
Matter 82602332
By Email

Dear Christopher

Confidential and Privileged

**Expert retainer letter – Australian Competition Tribunal merger
authorisation application**

1 Introduction

We act for Tabcorp Holdings Limited (**Tabcorp**).

This letter is to confirm your retainer to act as an independent expert in relation to an application by Tabcorp (if ultimately filed) to the Australian Competition Tribunal for merger authorisation (the **Proceedings**) and to set out the terms of your retainer.

Tabcorp will be responsible for payment of your fees, although your accounts are to be addressed to our office as referred to below.

In addition to the terms set out below, although the matter would be in the Australian Competition Tribunal, we request that you comply with the Federal Court General Practice Note GPN-EXPT (Expert Evidence). A copy of the Harmonised Expert Witness Code of Conduct (Annexure A to the Practice Note) is attached as Attachment 1 to this letter. You should fulfil the duties and responsibilities set out in the Code in undertaking your work and preparing for the presentation of evidence that you may ultimately be required to give in the Tribunal.

2 Scope of your assignment

Tabcorp and Tatts Group Limited (**Tatts**) have reached an agreement to combine the two companies via a Tatts Scheme of Arrangement in which Tatts shareholders will receive 0.8 Tabcorp shares plus 42.5 cents cash for each Tatts share held.

We would like you to prepare a report in which you address matters based on your expertise as an economist. For your assistance, we include a short guide to preparation of your expert report as Attachment 2 to this letter.

We propose to send you a list of questions that we would like you to address in your report. We will also send you factual assumptions and other materials that we will ask you to consider in preparing your report. For the time being, your brief includes the background documents identified in Attachment 3 to this letter. Please let us know if there are any further documents which you think should form part of your brief.

From time to time you may also be required to respond to further evidence or expert opinions if and when received from other parties. This may include attending a conference of experts retained by each of the parties in the Proceedings and the preparation of a joint report of experts retained in respect of the Proceedings.

Doc 59058949.4



You may need to be available to give evidence in the Australian Competition Tribunal in Sydney at some time during the course of the Proceedings. Although it is difficult to predict when that may occur, we expect you may need to be available to give evidence in March 2017.

We may also ask that you be available at other times when experts retained by the other parties to the Proceedings are giving evidence.

3 Confidentiality

Your independent expert report and any drafts prepared in accordance with your retainer are confidential and are not to be copied or used for any purpose unrelated to the Proceedings without our permission.

Material supplied to you by Herbert Smith Freehills is confidential and is not to be copied or used for any purpose unrelated to your retainer without our permission.

Your report and any drafts prepared by you should also have the following words inserted on the cover page:

This document is protected by legal professional privilege. To ensure privilege is not waived please keep this document confidential and in a safe and secure place. This document should not be distributed, nor any reference to it made, to any person or organisation not directly involved in making decisions on the subject matter of this document. If this document is requested by a government officer, Herbert Smith Freehills should be contacted immediately to ensure that privilege is claimed over the document and it should not be shown to, nor the contents discussed with, the government officer.

You and any other persons who will be assisting you may be requested to execute a confidentiality undertaking. You may be required to return all documents, copies and workings at the conclusion or termination of your retainer.

4 Conflicts of interest

As an independent expert, it is important that you are free from any possible conflict of interest in the provision of your opinions and report. You should ensure that you have no connection with any party to the Proceedings which would preclude you from providing your opinion in an objective and independent manner.

We set out below a list of the likely interested parties in the Proceedings.

- Tatts Group Limited
- The Australian Competition and Consumer Commission
- State and Territory Governments in Australia
- Horse racing industry bodies in each State and Territory of Australia

Please let us know if you have had any dealings with any of the parties.

5 Fee estimate

Please provide us with details of your rates.

Expenses such as taxis, parking, couriers, printing etc are to be billed at cost.

You should present your memoranda of fees on a monthly basis. This will assist us to deliver an overall memorandum to Tabcorp.

You may be asked to provide an estimate of fees. Should you become aware that your fee estimate is likely to alter in a material way, you must notify Herbert Smith Freehills immediately of the likely change and obtain approval for any material increase.



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6 Communications

As mentioned above, it is Herbert Smith Freehills' client which is responsible for paying your fees. Payment of your fees may take up to 60 days.

6 Communications

All communications, whether verbal or written, should be directed to our office, so that we can coordinate, manage and integrate work activities with legal requirements and ensure privilege is maintained as appropriate.

7 Your duties and responsibilities as an expert witness

Your role is that of an independent expert.

You are not an advocate for any party.

Though you are retained by Tabcorp, you are retained as an independent expert to assist the Australian Competition Tribunal and you have an overriding duty to it. The Tribunal expects you to be objective, professional and to form an independent view as to the matters in respect of which your opinion is sought.

Your duties are set out in the Code of Conduct attached to this letter.

Would you please sign and return this letter to confirm your agreement to the terms of the retainer.

Yours sincerely

Paul Hughes
Partner
Herbert Smith Freehills
+61 2 9225 5697
+61 405 145 697
paul.hughes@hsf.com

Chris Jose
Partner
Herbert Smith Freehills
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Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.

date _____

sign here ► _____

name of expert CHRISTOPHER PLEATSIKAS



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Attachment 1

Harmonised Expert Witness Code of Conduct Federal Court of Australia

APPLICATION OF CODE

- 1 This Code of Conduct applies to any expert witness engaged or appointed—
- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
 - (b) to give opinion evidence in proceedings or proposed proceedings.

GENERAL DUTIES TO THE COURT

- 2 An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

CONTENT OF REPORT

- 3 Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
- (a) the name and address of the expert;
 - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
 - (e) the reasons for and any literature or other materials utilised in support of such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
 - (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;



- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION

- 4 Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
- 5 In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

DUTY TO COMPLY WITH THE COURT'S DIRECTIONS

- 6 If directed to do so by the Court, an expert witness shall:
 - (a) confer with any other expert witness;
 - (b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
 - (c) abide in a timely way by any direction of the Court.

CONFERENCE OF EXPERTS

- 7 Each expert witness shall:
 - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
 - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.



Attachment 2

Preparation of your expert report

1. Introduction

Your introduction should contain the following information:

- (a) Your name and (business) address.
- (b) An acknowledgment of having read the Expert Evidence Practice Note (GPN-EXPT) (and having agreed to abide by it) and a reference to the appendix or Attachment in which it can be found.
- (c) A summary of your qualifications and experience (or reference to the appropriate paragraph in a statement you have previously filed in the Proceedings).
- (d) The scope of your assignment, including:
 - (1) the questions you have been asked;
 - (2) the assumptions (if any) you have been asked to make; and
 - (3) reference to the appendices or attachments in which these are set out.
- (e) A list of people who have assisted you in the preparation of your report, including their qualifications and the roles they played.
- (f) Reference to the appendices or attachments setting out the lists of documents you have relied on, and been supplied with.
- (g) An acknowledgment that your opinions are based wholly or substantially on specialised knowledge arising from your training, study or experience.

2 Summary of opinions

In the case of reports where a number of opinions have been expressed, a summary of your opinions should appear between the introduction and body of the report.

3 Formalities

Each paragraph of the report should be numbered, the pages should be numbered and the report should be in double spacing.

In the course of providing your opinion, you should ensure that you state, specify or provide:

- (1) the assumptions and the material facts on which each opinion expressed in your report is based;
- (2) the reasons for and any literature or other materials utilised in support of each opinion;
- (3) any examinations, tests or other investigations on which you have relied, identifying the person who carried them out and that person's qualifications;



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- (4) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
- (5) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
- (6) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate; and
- (7) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason;

If you are unable to provide an opinion because a particular question, issue or matter falls outside your field of expertise, then you must also expressly acknowledge that in your report.

4 **Appendices or attachments**

As a minimum, your report must have the following appendices or attachments:

- (a) Your curriculum vitae (if this is the first report you have filed in these proceedings).
- (b) The question(s) supplied by Herbert Smith Freehills which you answered in your report.
- (c) The documents that record any instructions given to you by Herbert Smith Freehills.
- (d) The assumptions (if any) you were asked to make for the purposes of preparing your report.
- (e) A list of documents and other materials that you have been instructed to consider or on which you have relied upon for the purposes of preparing your report.
- (f) A list of documents supplied to you by Herbert Smith Freehills.
- (g) A copy of the Expert Evidence Practice Note (GPN-EXPT) (this will be provided to you by Herbert Smith Freehills).

5 **Checking the report**

- (a) **Expert Evidence Practice Note (GPN-EXPT) and Harmonised Expert Witness Code of Conduct contained in Annexure A**
Ensure you have read and are familiar with this document, including its annexures.
- (b) **Paragraph numbering and cross referencing**
If you have made multiple drafts of your report it will be necessary to check the paragraph numbering remains sequential and that cross referencing is still accurate.
- (c) **Footnote**
Check footnotes are on the same page as the paragraphs to which they refer



Check every document referred to in a footnote is in the list of documents relied upon in the appendices.

(d) Documents relied upon

Check every document referred to in the report is in the list of documents relied upon in the appendices.

Prepare a copy of every document relied upon in your report for sending to Herbert Smith Freehills when your report is filed. In the case of journal articles, internet printouts, media reports, statistics etc, copies of the entire document are required. In the case of text books or other large publications, a copy of the front cover, title page, page showing publication details including edition and year of publication, and entirety of any chapter containing material referred to are required.

(e) Signing off on your report

When your report is fully completed you must ensure that the last page of the body of the report (ie before any appendices, exhibits or attachments) is signed and dated. There is no requirement that the signature be witnessed.

(f) Statement and exhibit

You may be asked to complete an affidavit or witness statement to which your expert report will be exhibited, so that your report may be put into evidence. If so, Herbert Smith Freehills will provide a draft and further instructions on finalising the affidavit or witness statement.



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Attachment 3

Index to brief

- 1 Tabcorp ASX release regarding proposed merger with Tatts dated 19 October 2016
- 2 Merger implementation Deed
- 3 Presentation released to the ASX dated 19 October 2016



Christopher Pleatsikas

Vice President

PhD, Regional Economic
Analysis
University of Pennsylvania

MS, Natural Resources
University of Vermont

BA, Arts and Sciences
University of Pennsylvania

Christopher Pleatsikas is a vice president at Charles River Associates. Now based in the Oakland office of CRA, he was previously based in CRA's Sydney office, where he was the co-director of its Asia-Pacific competition group. He was a Managing Director at Berkeley Research Group and, prior to that, was a Managing Director at LECG, in charge of its Australian litigation practice. He also has been a principal at Putnam, Hayes & Bartlett, Inc. Dr. Pleatsikas has served as a manager of the Economic Analysis Unit, Management Advisory Services, at Price Waterhouse and was a managing associate at Urban Systems Research and Engineering, Inc. His published papers include analyses of the interface between antitrust and regulatory policy, evaluation of the implications of standards for determining whether prices are predatory, assessments of the competitive implications of contractual provisions, and analyses of merger policies and regulations.

Professional history

2016–Present	Charles River Associates
2010–2016	Berkeley Research Group
2006–2010	LECG
2004–2006	Charles River Associates
1991–2004	LECG
1987–1991	Putnam Hayes and Bartlett
1983–1987	Independent Consultant
1981–1983	Price Waterhouse
1976–1981	Urban Systems Research and Engineering

Teaching experience

Dr. Pleatsikas has served as Lecturer/Distinguished Lecturer in Economics at the University of California, Santa Cruz, teaching industrial organization/antitrust. He has also taught econometrics and quantitative methods at the University of Pennsylvania and the University of Maryland.

Economic expertise

While Dr. Pleatsikas specializes in competition analysis and antitrust issues, he has provided expert advice and testimony on a number of other economic issues. His areas of expertise include:

Antitrust/competition analysis

Mergers and acquisitions, market definition, assessments of market power, evaluation of contractual and other business practices, monopolization and attempted monopolization, monopoly leveraging, price fixing and price discrimination, predatory pricing, class action certification and evaluation of competition and efficiency impacts of business practices and public policy. He was an advisor in the most recent rewrite of the Merger Guidelines for the Australian antitrust regulator.

Intellectual property

Patent/copyright/trademark infringement; evaluation of standard essential patents (SEPs) and reasonable royalties; valuation of intellectual property and trademarks; patent fraud/misuse; ITC disputes; and pooling.

Damages

Causation, lost sales or profits, reasonable royalty, unjust enrichment, punitive damages, tax-related matters, breach of contract, fraud, intellectual property, class action certification and damages, antitrust and “unfair competition”.

Impact assessment analysis

Assessment of economic impacts, often by industry sector and/or geographic region for a variety of policy and economic activity changes; development and implementation of economic impact assessment models.

Regulation

Review and analysis of regulatory decisions and impact assessment methodologies and methods; development of deregulation/re-regulation regimes; prudence inquiries, facility siting and planning, reasonableness of rates and ratebase, and demand forecasting.

In addition, Dr. Pleatsikas has experience in assessing economic impact using economic impact and economic forecasting models.

Industry experience

Dr. Pleatsikas has been engaged in assignments covering a wide range of industries. For example, he has extensive experience in a variety of network industries, having evaluated competition, pricing, mergers and damages issues in a wide variety of network industries. These include financial services (credit cards, charge cards, debit cards and other payment instruments), energy transportation and distribution (natural gas and electricity), telecommunications, computer networks and computer services and transportation (trucking, railroads, ocean shipping, terminals and airlines).

Dr. Pleatsikas also has expertise in high technology industries, including computer hardware and software used in a variety of applications, as well as other high technology applications (e.g., medical devices and machine tools) and media industries. These assignments have included antitrust, intellectual property and contract damages cases. He has been engaged to examine price squeeze, margin squeeze and predatory pricing allegations in the pay television, electricity, food processing/distribution/retailing and building products industries.

In addition, Dr. Pleatsikas has broad expertise in the energy and mining industries, including impact and feasibility studies, antitrust litigation, intellectual property disputes, contract disputes and pricing forecasts and arbitrations. He has worked in many segments of the mining industry, including hard rock and coal mining. In the energy industry he has worked in all major segments, including oil and gas, coal, electricity, and renewable technologies, as well as at all stages of the industry, including extraction, processing, distribution (wholesale and retail) and consumer demand.

Testimony, expert reports, and affidavits

Dr. Pleatsikas has testified and/or submitted testimony on numerous occasions in a variety of venues, including:

- U.S. Federal Court
- U.S. State Courts (e.g., California, Louisiana)
- State Administrative Agencies (e.g., Public Utilities Commissions)
- U.S. Federal Administrative Agencies (e.g., International Trade Commission)
- Federal Court of Australia
- Australian Competition Tribunal
- Copyright Tribunal of Australia
- High Court of New Zealand
- High Court of the Republic of Singapore

Dr. Pleatsikas has also provided expert reports to foreign administrative agencies and has testified in private arbitrations. In addition, he has been retained as an expert on numerous occasions in other matters that were settled prior to trial or the provision of written or oral testimony. A list of his testimony is available upon request.

Publications

1. "Update on Antitrust Enforcement in the United States," *Australian Journal of Competition and Consumer Law*, September 2016
2. "Federalism, States' Rights and the Antitrust Laws: The Supreme Court Inflicts Pain on North Carolina Dentists," *Australian Journal of Competition and Consumer Law*, December 2015

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3. "The Ghost of Illinois Brick," *Australian Journal of Competition and Consumer Law*, December 2014
 4. "The Extraterritorial Application of U.S. Antitrust Law," *Westlaw Journal Antitrust* 22(6), October 2014
 5. "The Supreme Court Decision on Pay for Delay: An Economic Perspective," *Australian Journal of Competition and Consumer Law*, December 2013
 6. *The Palgrave Encyclopedia of Strategic Management*, entries for "perfect competition," "rivalry and collusion" and "winner-take-all markets," 2013–2014
 7. "Antitrust Analysis for Software Markets," World Scientific Initiative Handbook of Antitrust Economics, forthcoming
 8. "Smartphone Wars and Their Antitrust Implications," *Australian Journal of Competition and Consumer Law* 21, 2013
 9. "GUPPI, the New Horizontal Merger Guidelines and Assessing Potential Competitive Effects," with J. Douglas Zona, *Australian Journal of Competition and Consumer Law* 20, 2012, 135
 10. "The New United States Horizontal Merger Guidelines," *Australian Journal of Competition and Consumer Law* 19(3), 2011, 232
 11. "Sports Leagues and Joint Ventures under United States Antitrust Law," *Trade Practices Law Journal* 18(4), 2010, 301
 12. "An Economic Perspective on Damages Calculations: Common Problems in Specifying the But-For World," with M. Akemann, Chapter 6 in *Current Trends and Issues in Antitrust Litigation*, Practising Law Institute, 2010
 13. "Changes in Antitrust Policy Concerning Unilateral Conduct Rules," *Trade Practices Law Journal* 17(4), 2009, 301
 14. "Results from the Joint Hearings on Antitrust Enforcement and Intellectual Property Rights," *Trade Practices Law Journal* 15(4), 2007, 264
 15. "Dealing in Imaginary Goods: Implications for Antitrust and Intellectual Property Policy," with Andrew D. Schwarz, *Trade Practices Law Journal* 15(1), 2007, 61
 16. "Expert Economic Evidence in the United States," *Trade Practices Law Journal* 14(3), 2006, 187
 17. "Product Market Definition in the Television Industry," *Competition & Consumer Law Journal* 13(2), 2005, 99
 18. "The Oracle/PeopleSoft Merger Case: Market Definition and Unilateral Effects Analysis in the Software Industry," with Andrew Schwarz, *Trade Practices Law Journal* 12, 2004, 236
 19. "The Telecommunications Act of 1996 and the U.S. Antitrust Laws," with Michael Akemann, *Trade Practices Law Journal* 11(4), 2003, 260
 20. "An Economic Interpretation of Recent American and Australian Judicial Decisions on Predatory Pricing," *Trade Practices Law Journal* 11(1), 2003, 12

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21. "The California Electricity Crisis and Antitrust Analysis," with Philip McLeod, *Trade Practices Law Journal* 10(1), 2002, 64
 22. "Economic Fallacies Encountered in the Law and Economics of Antitrust: Illustrations from Australia and New Zealand," with David Teece, *Trade Practices Law Journal* 9(2), 2001, 73
 23. "The Competitive Assessment of Vertical Long-Term Contracts," with David Teece, *Australian Business Law Review* 29, 2001, 454
 24. "The Napster Controversy: Intellectual Property Meets Competition Policy," with Ed Sherry, *Trade Practices Law Journal* 9(1), 2001, 59
 25. "The Analysis of Market Definition and Market Power in the Context of Rapid Innovation," with David Teece, *International Journal of Industrial Organization* 19, 2001, 665
 26. "New Indicia for Antitrust Analysis in Markets Experiencing Rapid Innovation," with David Teece, in J. Ellig (ed.), *Dynamic Competition and Public Policy: Technology, Innovation, and Antitrust Issues*, Cambridge University Press, 2000
 27. "The Approach to Merger Analysis by Federal Antitrust Agencies in the United States, Australia, and New Zealand: An Economic View," with Mary Coleman and David Teece, *Trade Practices Law Journal* 6, 1998, 153
 28. "Electric Competition in New Zealand: Putting Last Things First," with Bruce Turner, *Public Utilities Fortnightly* 134(12), June 15, 1996
 29. "Customer By-Pass in the Natural Gas and Telecommunications Industries: A Comparative Analysis," with Mary Barcella, in David O. Wood (ed.), *Papers and Proceedings of the 8th Annual North American Conference of the International Association of Energy Economists on the Changing World Energy Economy*, November 19–21, 1986, MIT, May 1987, 104–108.
 30. *Regional and Temporal Variation in Production Cost Relationships for Manufacturing Industries*, University of Michigan (Ph.D. dissertation at the University of Pennsylvania), 1983
 31. *Solar Energy and the U.S. Economy*, with E. Hudson and R. Goettle, Westview Press, 1982
 32. "Estimates of Employment Impacts of Product Charges on Product Packaging and Paper-Paperboard Intermediate Product Sectors," Paper No.5 of the papers in support of the Resource Conservation Committee, 1978
 33. "A Study of Measures of Substantial Attachment to the Labor Force," Employment and Training Administration, U.S. Department of Labor, 1978

Conference papers and presentations

1. "Intellectual Property Enforcement and Antitrust Counterattack," presentation to the Australian Competition and Consumer Commission, May 2013
2. "Expert Evidence in Antitrust Litigation: An Economic Perspective," Centre for Regulation and Market Analysis, 10th Annual Conference, October 2012

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3. "Counterfactuals in Antitrust Analysis," 36th Annual Competition and Consumer Workshop, Law Council of Australia, Business Law Section, August 2011
 4. Comments on "A Critical Assessment of Part 3A of the Trade Practices Act," 8th Annual University of South Australia Trade Practices Workshop, October 2010
 5. "An Economic Perspective on Damages Calculations: Common Problems in Specifying the But-For World," with M. Akemann, Current Trends and Issues in Antitrust Litigation, San Francisco, September 2010
 6. "Comments on the Riddle Underlying Refusal-to-Deal Theory," Sydney Competition Law Conference, May 2010
 7. "Moot Court Debate on Revisions to s46 of the Trade Practices Act," 5th Annual University of South Australia Trade Practices Conference, October 2007
 8. "Critical Economic Issues in Competition Litigation: Why Assumptions Can Be So Problematic," 4th Annual University of South Australia Trade Practices Conference, October 2006
 9. "The Australian Energy Regulator and the ACCC," Trade Practices Workshop, Business Law Section, Law Council of Australia, Canberra, July 2006
 10. "Expert Evidence in Competition Litigation: Comments," 2005 Sydney Competition Law Conference, November 12, 2005
 11. "Predatory Pricing After Boral," 2003 Sydney Competition Law Conference, May 17, 2003
 12. "Exploitation of Market Power," with Stephen King, Economics in Trade Practices Workshop, Federal Court of Australia, April 7–8, 2001
 13. "The Competitive Assessment of Vertical Long-Term Contracts," with David Teece, Trade Practices Workshop, Business Law Section, Law Council of Australia, Queensland, August 12, 2000
 14. "Issues for Defining Relevant Markets for Competition Analysis in the Oil and Gas Industry," New Zealand Petroleum Conference 2000, Christchurch, New Zealand, March 22, 2000
 15. "New Indicia for Competition Analysis in High Technology Industries," with David Teece, Dynamic Competition and Public Policy Conference, sponsored by the Mercatus Center and the James Buchanan Center at George Mason University, Washington, DC, December 16–17, 1998
 16. "The Competitive Implications of Mandatory Vertical Disintegration in Network Industries: Theory and Evidence," with David Teece, keynote address at the Ninth Annual Workshop of the Competition Law & Policy Institute of New Zealand, August 1998
 17. "Economic Impacts of the Domestic International Sales Corporation (DISC) Tax Provisions," prepared for the American Business Conference and the Business Roundtable, 1982
 18. "Federal Tax Credits, Profitability and Market Diffusion of New Thermal Technologies for Industry," with W. Moss, American Society of Mechanical Engineers Annual Conference, Albuquerque, New Mexico, 1982

19. "Comparing Lifetime Costs of Meeting Sulfur Dioxide Emissions Standards with and without Flue Gas Desulfurization for Electric Power Plants," with C. Demeter, 43rd Annual American Power Conference, Chicago, 1981
20. "An Analysis of the Macroeconomic Effects of Increased Market Penetration of Solar Energy Technologies," Second Miami Conference on Alternative Energy Sources, 1979
21. "Regional Economic Impacts of Energy-Related Growth," American Association for the Advancement of Science, Symposium on Management of Energy-Related Growth, Houston, 1979

Dr. Pleatsikas also serves as editor of "The Report from North America," a regular column on antitrust developments in the United States that appears in the *Competition and Consumer Law Journal*, one of the leading antitrust journals in Australia.



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6 March 2017
Matter 82602332
By Email

Dear Christopher

Confidential and Privileged

Instruction letter - Australian Competition Tribunal merger authorisation application

1 Introduction

We refer to the retainer letter that we sent you dated 1 December 2016 (**Retainer Letter**). The Retainer Letter confirmed your retainer to act as an independent expert in relation to an application by Tabcorp (if ultimately filed) to the Australian Competition Tribunal for merger authorisation (the **Proceedings**) and to set out the terms of your retainer.

The Retainer Letter also stated that we would like you to prepare an expert report. The purpose of this letter is to confirm that we would like you to provide an expert report with respect to the Proceedings based on your expertise as an economist in which you answer the questions set out below (in Section 2), having regard to the instructions set out below (in Section 3).

We also remind you that your retainer is governed by the Federal Court General Practice Note GPN-EXPT (Expert Evidence), and that you must comply with the Harmonised Expert Witness Code of Conduct.

2 Questions to be addressed in expert report

The questions to be addressed in your expert report, based on your expertise as an economist, are as follows:

- (a) As a matter of economic theory, what are the relevant effects to consider when assessing the economic impact of a merger or acquisition?
- (b) What are the economic principles and methodologies relevant to:
 - (1) defining the relevant market or markets for the purpose of analysing the competitive effects of Tabcorp's proposed merger with Tatts (the **proposed merger**)?
 - (2) assessing the competitive effects of the proposed merger?
 - (3) assessing the effect of the proposed merger on total economic welfare?
- (c) What are:
 - (1) the dimensions, and hence the definition, of the relevant market or markets that would be relevant to analysing the competitive effects of the proposed merger?
 - (2) the likely competitive effects of the proposed merger?
 - (3) the likely effects of the proposed merger on total economic welfare?

3 Instructions

By way of background:



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- The Tribunal must not grant authorisation in relation to a proposed acquisition of shares or assets unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to occur (cf. *Competition and Consumer Act 2010* (Cth), s 95AZH(1));
 - The Tribunal assesses whether there is likely to be such a public benefit by weighing the public benefits and detriments with the proposed acquisition, compared to the likely future without the proposed acquisition;
 - A public benefit is anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of the *Competition and Consumer Act*) the achievement of the economic goals of efficiency and progress;
-
- A public benefit needs to be of substance and durable. The weight given to particular benefits may vary depending on the extent to which the Australian community is able to take advantage of them;
 - A public detriment primarily includes the detriments flowing from a lessening of competition as a result of the proposed acquisition, but can include detriments not associated with a lessening of competition.

Please have regard to the following assumptions and materials in preparing your expert report:

- (a) Assumptions for Chris Pleatsikas dated 4 March 2017 (**Assumptions**);
- (b) The Excel spreadsheet referred to as "TBP.001.018.5686.xlsx" (this contains wagering turnover data for FY2006 – FY2016, and is described in the Assumptions);
- (c) The Excel spreadsheet referred to as "TBP.001.022.0002.xlsx" (this contains Tabcorp phone and online betting account data, and is described in the Assumptions); and
- (d) The Excel spreadsheet referred to as "Tatts Digital and Telephone Wagering Turnover FY12 to FY16" (with document identification number TAT.001.015.0804) (this contains Tatts phone and online betting account data, and is described in the Assumptions);
- (e) Tabcorp ASX release regarding proposed merger with Tatts dated 19 October 2016 ("TBP.011.001.0110.pdf");
- (f) Merger Implementation Deed ("TBP.004.011.0610.pdf"); and
- (g) Presentation released to the ASX dated 19 October 2016 (TBP.006.001.0121.pdf).

Yours sincerely

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Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Tabcorp

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Melbourne Australia 3004
GPO Box 1943
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Telephone 61 3 9868 2100
Facsimile 61 3 9868 2300
Website www.tabcorp.com.au

19 October 2016

To: Australian Securities Exchange
Market Announcements Office
20 Bridge Street
Sydney NSW 2000

TABCORP / TATTS IMPLEMENTATION DEED

Attached is the Implementation Deed in relation to the recommended combination of Tabcorp Holdings Limited and Tatts Group Limited which was announced today.



Fiona Mead
Company Secretary (subject to approval)

Enc.



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Deed

EXECUTION

Merger implementation deed

Tabcorp Holdings Limited

Tatts Group Limited

rodd.levy@hsf.com



Contents

Table of contents

1	Definitions and interpretation	2
1.1	Definitions	2
1.2	Interpretation	15
1.3	Interpretation of inclusive expressions.....	16
1.4	Business Day	16
1.5	Deed components.....	16
1.6	Awareness	16
2	Agreement to proceed with the Transaction	16
3	Conditions Precedent and pre-implementation steps	17
3.1	Conditions Precedent	17
3.2	Reasonable endeavours.....	18
3.3	Waiver of Conditions Precedent	19
3.4	Termination on failure of Condition Precedent	19
3.5	Certain notices relating to Conditions Precedent	21
4	Transaction steps	21
4.1	Scheme.....	21
4.2	Scheme Consideration	21
4.3	New Tabcorp Shares	22
4.4	Ineligible Foreign Shareholders	23
4.5	Provision of Tatts Share information.....	23
4.6	No amendment to the Scheme without consent.....	23
4.7	Excluded Tatts Shareholders.....	23
5	Implementation	24
5.1	Timetable	24
5.2	Tatts' obligations.....	24
5.3	Tabcorp's obligations.....	27
5.4	Tatts Board recommendation	29
5.5	Responsibility statements	29
5.6	Conduct of Court proceedings	30
5.7	Executive Incentive Arrangements	30
6	Conduct of business and Permitted Dividends	31
6.1	Conduct of business	31
6.2	Permitted Ordinary Course Dividends	34
6.3	Tatts Special Dividend	34
7	Profile of Merged Entity	35
7.1	Tabcorp board composition	35
7.2	Tatts board composition	35
7.3	Chairman and Chief Executive Officer.....	35
7.4	Senior management	35
8	Integration Planning	35
8.1	Pre-Implementation Date Integration planning	35
8.2	Integration Due Diligence	36



Contents

8.3	Change of control provisions	36
9	Representations and warranties	37
9.1	Tabcorp's representations and warranties	37
9.2	Tabcorp's indemnity.....	37
9.3	Qualifications on Tabcorp's representations, warranties and indemnities	37
9.4	Tatts' representations and warranties.....	38
9.5	Tatts' indemnity.....	38
9.6	Qualifications on Tatts' representations, warranties and indemnities	38
9.7	Survival of representations and warranties	38
9.8	Survival of indemnities	38
9.9	Timing of representations and warranties	38
9.10	No representation or reliance	39
10	Releases	39
10.1	Tatts and Tatts directors and officers	39
10.2	Tabcorp and Tabcorp directors and officers.....	39
10.3	Deeds of indemnity and insurance	40
11	Public announcement	40
11.1	Announcement of the Transaction.....	40
11.2	Subsequent announcements and disclosure.....	41
12	Confidentiality	41
13	Exclusivity	41
13.1	No shop and no talk.....	41
13.2	Fiduciary exception	42
13.3	Notification of approaches	42
13.4	Matching right	42
13.5	Receipt of Competing Proposal by Tabcorp.....	43
13.6	No shop.....	43
13.7	Notification of approaches	44
13.8	Provision of information by Tatts	44
13.9	Compliance with law	44
14	Reimbursement Fee and Competition Approval Reimbursement Fee	45
14.1	Background to Reimbursement Fee and Competition Approval Reimbursement Fee.....	45
14.2	Tatts Reimbursement Fee triggers	45
14.3	Tabcorp Reimbursement Fee triggers	46
14.4	Timing of payment of Reimbursement Fee	46
14.5	Basis of Reimbursement Fee and Competition Approval Reimbursement Fee	47
14.6	Compliance with law	47
14.7	Reimbursement Fee payable only once	48
14.8	Other Claims	48
14.9	No Reimbursement Fee or Competition Approval Reimbursement Fee if Scheme Effective	48
14.10	Competition Approval Reimbursement Fee.....	48
15	Termination	48
15.1	Termination for material breach.....	48
15.2	Termination for breach of representations and warranties	50



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Contents

15.3	Effect of termination	50
15.4	Termination	50
15.5	No other termination	51
16	Duty, costs and expenses	51
16.1	Stamp duty	51
16.2	Costs and expenses	51
17	GST	51
18	Notices	52
18.1	Form of Notice	52
18.2	How Notice must be given and when Notice is received	53
19	General	53
19.1	Governing law and jurisdiction	53
19.2	Service of process	54
19.3	No merger	54
19.4	Invalidity and enforceability	54
19.5	Waiver	54
19.6	Variation	54
19.7	Assignment of rights	54
19.8	Acknowledgement	55
19.9	Further action to be taken at each party's own expense	55
19.10	Entire agreement	55
19.11	Counterparts	55
19.12	Relationship of the parties	55
19.13	Remedies cumulative	55
19.14	Exercise of rights	55
 Schedules		
 Schedule 1		
	Tabcorp Representations and Warranties	57
 Schedule 2		
	Tatts Representations and Warranties	59
 Schedule 3		
	Tabcorp details	61
 Schedule 4		
	Tatts details	62
	Signing page	63



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Contents

Attachment 1
Scheme of arrangement

Attachment 2
Deed poll



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Merger implementation deed

Date ► 18 October 2016

Between the parties

Tabcorp	Tabcorp Holdings Limited ABN 66 063 780 709 of 5 Bowen Crescent, Melbourne, VIC 3004
----------------	--

Tatts	Tatts Group Limited ABN 19 108 686 040 of 87 Ipswich Road, Woolloongabba, QLD 4102
--------------	--

Recitals	<ol style="list-style-type: none"> 1 Subject to the conditions in this deed, the parties have agreed to merge and, for this purpose, Tabcorp will acquire all of the ordinary shares in Tatts by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Tatts and the Scheme Shareholders. 2 The parties have agreed to implement the scheme of arrangement on the terms of this deed.
-----------------	---

This deed witnesses as follows:

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
ACCC	the Australian Competition and Consumer Commission.
AIFRS	the International Financial Reporting Standards as adopted in Australia.
ASIC	the Australian Securities and Investments Commission.
Associate	has the meaning set out in section 12 of the Corporations Act.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
Business Day	a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne.
CCA	the <i>Competition and Consumer Act 2010</i> (Cth).
Claim	<p>any claim, demand, legal proceedings or cause of action, including any claim, demand, legal proceedings or cause of action:</p> <ol style="list-style-type: none"> 1 based in contract (including breach of warranty); 2 based in tort (including misrepresentation or negligence); 3 under common law or equity; or 4 under statute (including the Australian Consumer Law (being Schedule 2 of the CCA or Part VI of the CCA, or like provision in any state or territory legislation), <p>in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this deed.</p>



Term	Meaning
Competition Approval Reimbursement Fee	A\$35,000,000.
Competing Proposal	<p data-bbox="634 545 1263 648">in relation to a party, any proposal, agreement, arrangement or transaction (or expression of interest therefor), which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):</p> <ol data-bbox="634 664 1300 1112" style="list-style-type: none"> <li data-bbox="634 664 1300 767">1 directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 10% or more of the share capital of the party or any material Subsidiary of the party; <li data-bbox="634 782 1284 832">2 acquiring Control of the party or any material Subsidiary of the party; <li data-bbox="634 847 1292 978">3 directly or indirectly acquiring or become the holder of, or otherwise acquire or have a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of the party's business or assets or the business or assets of the group consisting of the party and its subsidiaries; <li data-bbox="634 993 1256 1043">4 otherwise directly or indirectly acquiring or merging with the party or a material Subsidiary of the party; or <li data-bbox="634 1058 1284 1112">5 require the party to abandon, or otherwise fail to proceed with, the Transaction, <p data-bbox="634 1127 1300 1310">whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.</p> <p data-bbox="634 1325 1292 1403">Each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.</p>
Condition Precedent	each of the conditions set out in clause 3.1.
Confidentiality Agreement	the confidentiality deed between Tabcorp and Tatts dated 14 September 2015, including the Protocols.
Control	has the meaning given in section 50AA of the Corporations Act, disregarding subsection 50AA(4).
Corporations Act	the <i>Corporations Act 2001</i> (Cth).



Term	Meaning
Corporations Regulations	the <i>Corporations Regulations 2001</i> (Cth).
Court	the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Tabcorp and Tatts.
Deed Poll	a deed poll to be entered into by Tabcorp substantially in the form of Attachment 2 under which Tabcorp covenants in favour of the Scheme Shareholders to perform, subject to satisfaction of the Conditions Precedent, the obligations attributed to Tabcorp under the Scheme.
Effective	when used in relation to the Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to the Scheme.
Effective Date	the date on which the Scheme becomes Effective.
End Date	30 September 2017, which date will be extended to 31 December 2017 without any action being required on the part of either party if the Condition Precedent in clause 3.1(a)(1) has not been satisfied or waived by 30 September 2017.
Exclusivity Period	the period from and including the date of this deed to the earlier of: <ol style="list-style-type: none"> 1 the date of termination of this deed; 2 the End Date; and 3 the Effective Date.
Executive Incentive Arrangement	a performance right in respect of Tatts Shares or Tabcorp Shares (as applicable) issued or to be issued to an employee of the Tatts Group or Tabcorp Group (as applicable).
Fairly Disclosed	a reference to 'Fairly Disclosed' means disclosed to a party or any of its Related Persons, to the extent that, and in sufficient detail so as to enable, a reasonable bidder (or one of its Related Persons) experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the disclosing party, to identify with reasonable particularity the nature and scope of the relevant matter, event or circumstance (including, in each case, that the financial effect of the relevant matter, event or circumstance was reasonably ascertainable from the information



Term	Meaning
	disclosed).
Financial Advisor	any financial advisor retained by a party in relation to the Transaction or a Competing Proposal from time to time.
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
Implementation Date	the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing.
Independent Expert	the independent expert in respect of the Scheme appointed by Tatts.
Independent Expert's Report	means the report to be issued by the Independent Expert in connection with the Scheme, such report to be included in or to accompany the Scheme Booklet, and including any subsequent, updated or supplementary report, setting out the Independent Expert's opinion whether or not the Transaction is in the best interests of Tatts Shareholders and the reasons for holding that opinion.
Ineligible Foreign Shareholder	a Scheme Shareholder whose address shown in the Tatts Share Register on the Scheme Record Date is a place outside Australia and its external territories or New Zealand, unless Tabcorp (acting reasonably, and after consultation with Tatts) determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with New Tabcorp Shares when the Scheme becomes Effective.
Insolvency Event	means, in relation to an entity: <ol style="list-style-type: none"> <li data-bbox="634 1830 1263 1884">1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity; <li data-bbox="634 1895 1235 1925">2 a liquidator, provisional liquidator, administrator, receiver,



Term	Meaning
	<p>receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;</p> <p>3 the entity executing a deed of company arrangement;</p> <p>4 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</p> <p>5 the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act unless the entity has, or has access to, committed financial support from its parent entity such that it is able to pay its debts; or</p> <p>6 the entity being deregistered as a company or otherwise dissolved.</p>
Listing Rules	the official listing rules of ASX.
Material Adverse Change	<p>means, in relation to a party, an event, change, condition, matter, circumstance or thing occurring, or an event or matter does not occur or condition is not satisfied (including, where a Third Party counterparty to a contract, licence, registration, permit or authorisation held by or to which a Tabcorp Group Member or Tatts Group Member is a party, does not provide their consent, approval or waiver as may be required having regard to the terms of the Transaction) before, on or after the date of this deed (each a Specified Event) which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances or things of a like kind that have occurred, has had or would be considered reasonably likely to have:</p> <p>1 the effect of a diminution in the value of the consolidated net assets of the party and its subsidiaries, taken as a whole and disregarding intangible asset write downs, by at least \$340 million in the case of Tabcorp or at least \$600 million in the case of Tatts against what it would reasonably have been expected to have been but for such Specified Event; or</p> <p>2 the effect of a diminution in the recurring consolidated earnings before interest and tax of the party and its subsidiaries, taken as a whole and disregarding abnormal and non-recurring items, by at least \$100 million per financial year for the party and its subsidiaries against what they would reasonably have been expected to have been but for such Specified Event,</p> <p>other than an event, change, condition, matter, circumstance or thing:</p> <p>3 required or expressly permitted by this deed, the Scheme or the transactions contemplated by either;</p> <p>4 that is Fairly Disclosed in the Tabcorp Disclosure Materials or the Tatts Disclosure Materials (or which ought reasonably have</p>



Term	Meaning
	<p>been expected to arise from a matter, event or circumstance which was so disclosed);</p> <p>5 agreed to in writing by the other party;</p> <p>6 arising as a result of any generally applicable change in law or governmental policy (including any fee, tax, levy, charge, payment, cost, impost, deduction or withholding imposed or collected by, or payable to, any Government Agency or Racing Control Body by any participant in any industry in which either party conducts its business);</p> <p>7 arising from changes in economic or business conditions that impact on the party and its competitors in a similar manner;</p> <p>8 that was Fairly Disclosed in an announcement made by the party to ASX, or a document lodged by the party with ASIC, in the 12 month period prior to the date of this deed (or which ought reasonably have been expected to arise from a matter, event or circumstance which was so disclosed); or</p> <p>9 which has a similar or substantially similar impact on the other party.</p>
Material Contract	<p>any agreement, contract, deed or other arrangement or instrument to which the party or one of its subsidiaries is a party that:</p> <p>1 imposes obligations or liabilities on any party or under which a party derives revenue, of at least \$25 million per annum or \$100 million over the life of the agreement, contract, deed or other arrangement or instrument; or</p> <p>2 is material in the context of the businesses of the party and its subsidiaries taken as a whole.</p>
Merged Entity	<p>the combination of Tabcorp and Tatts represented by Tabcorp as it will then be constituted if the Scheme becomes Effective and the transactions and actions contemplated in this deed take effect.</p>
New Tabcorp Share	<p>a fully paid ordinary share in Tabcorp to be issued to Scheme Shareholders under the Scheme.</p>
Operating Rules	<p>the official operating rules of ASX.</p>
Performance Right	<p>a right to be issued a Restricted Share under the Tatts Group Rights Plan.</p>
Permitted Dividend	<p>a Permitted Ordinary Course Dividend or a Tatts Special Dividend.</p>



Term	Meaning
Permitted Ordinary Course Dividend	a dividend permitted to be paid in accordance with clause 6.2.
Prescribed Occurrence	<p>means, in relation to a party, other than:</p> <ol style="list-style-type: none"> 1 as required or expressly permitted by this deed, the Scheme or the transactions contemplated by either; 2 as Fairly Disclosed in the Tabcorp Disclosure Materials or the Tatts Disclosure Materials; 3 as agreed to in writing by the other party; 4 as Fairly Disclosed by the party in an announcement made by it to ASX, or a document lodged by it with ASIC, in the 12 month period prior to the date of this deed; or 5 any payments, distributions or transfers solely between members of the Tatts Group in order for the Tatts Board to be able to declare and pay the Tatts Special Dividend, <p>the occurrence of any of the following after the date of this deed:</p> <ol style="list-style-type: none"> 1 the party converting all or any of its shares into a larger or smaller number of shares; 2 the party or one of its subsidiaries resolving to reduce its share capital in any way; 3 the party or one of its subsidiaries: <ul style="list-style-type: none"> • entering into a buy-back agreement; or • resolving to approve the terms of a buy-back agreement under the Corporations Act; 4 the party or one of its subsidiaries issuing shares or securities convertible into shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than: <ul style="list-style-type: none"> • the issue of shares on the vesting of any rights presently on issue under the party's executive incentive plan; or • the grant of new rights to employees in the ordinary course under current Executive Incentive Arrangements, in the case of Tatts up to a total of 700,000 new rights and in the case of Tabcorp up to a total of 3,000,000 new rights, and the issue of shares upon the vesting of those rights; 5 the party or one of its subsidiaries disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property; 6 the party or one of its subsidiaries granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property; 7 an Insolvency Event occurs in relation to the party or one of its subsidiaries; or 8 the party declaring, paying or distributing any dividend, bonus



Term	Meaning
	or other share of its profits or assets to its shareholders, other than a Permitted Dividend.
Protocols	the communications protocol set out in Schedule 2 of the Confidentiality Agreement.
Racing Control Body	any club, society, association, corporation, or body of persons (whether incorporated or unincorporated), which is established or operates for the purpose of: <ol style="list-style-type: none"> 1 conducting or controlling thoroughbred racing, harness racing or greyhound racing; or 2 imposing, administering or collecting fees in connection with thoroughbred racing, harness racing or greyhound racing.
RG 60	Regulatory Guide 60 issued by ASIC in September 2011.
Registered Address	in relation to a Tatts Shareholder, the address shown in the Tatts Share Register as at the Scheme Record Date.
Regulator's Draft	the draft of the Scheme Booklet in a form which is agreed to between the parties (acting reasonably) and that is provided to ASIC for approval pursuant to subsection 411(2) of the Corporations Act.
Regulatory Approval	an approval or consent set out in clause 3.1(a).
Reimbursement Fee	A\$55,000,000.
Related Bodies Corporate	has the meaning set out in section 50 of the Corporations Act.
Related Person	in respect of a party or its Related Bodies Corporate, each director, officer, employee, Financial Advisor (and each director, officer, employee or contractor of that Financial Advisor), agent or representative of that party or Related Body Corporate.
Relevant Interest	has the meaning given in sections 608 and 609 of the Corporations Act.



Term	Meaning
Restricted Share	a Tatts Share which is subject to a disposal restriction, as determined by the Tatts Board under the Tatts Group Rights Plan.
Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Tatts and the Scheme Shareholders, the form of which is attached as Attachment 1, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Tabcorp and Tatts.
Scheme Booklet	<p>the scheme booklet to be prepared by Tatts in respect of the Transaction in accordance with clause 5.2(a) in a form agreed between the parties (acting reasonably) to be despatched to the Tatts Shareholders and which must include or be accompanied by:</p> <ul style="list-style-type: none"> • a copy of the Scheme; • an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and RG 60; • the Independent Expert's Report; • a copy or summary of this deed; • a copy of the executed Deed Poll; • a notice of meeting; and • a proxy form.
Scheme Consideration	the consideration to be provided by Tabcorp to each Scheme Shareholder for the transfer to Tabcorp of each Scheme Share, being for each Tatts Share held by a Scheme Shareholder as at the Scheme Record Date, an amount of 0.80 New Tabcorp Shares plus a cash sum of \$0.425, subject to adjustment in accordance with clause 6.3.
Scheme Meeting	the meeting of Tatts Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
Scheme Record Date	5.00pm on the fifth Business Day after the Effective Date or such other time and date as the parties agree in writing.
Scheme Shares	all Tatts Shares held by the Scheme Shareholders as at the Scheme Record Date.
Scheme Shareholder	a Tatts Shareholder as at the Scheme Record Date.



Term	Meaning
Second Court Date	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
Security Interest	has the meaning given in section 51A of the Corporations Act.
Subsidiary	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
Superior Proposal	<p>in relation to Tatts, a <i>bona fide</i> Competing Proposal received by it from a Third Party:</p> <ol style="list-style-type: none"> 1 which, if entered into or completed, would result in a Third Party acquiring Control of Tatts; 2 not resulting from a breach by Tatts of any of its obligations under clause 13 of this deed (it being understood that any actions by the Related Persons of Tatts in breach of clause 13 shall be deemed to be a breach by Tatts for the purpose hereof); and <p>which the Tatts Board, acting in good faith, and after receiving written legal advice from its legal advisor and written advice from its financial advisor, determines would, if completed substantially in accordance with its terms, likely be more favourable to Tatts Shareholders (as a whole) than the Transaction, taking into account all terms and conditions and other aspects of the Competing Proposal (including any timing considerations, any conditions precedent or other matters affecting the probability of the Competing Proposal being completed).</p>
Tabcorp Board	the board of directors of Tabcorp and a 'Tabcorp Board Member ' means any director of Tabcorp comprising part of the Tabcorp Board.
Tabcorp Constitution	the constitution, as amended from time to time, of Tabcorp.
Tabcorp Data Room	the online data room established by Tabcorp which is accessed at: https://services.intralinks.com/ui/flex/CIX.html?workspaceId=3682805&br=4220452992&defaultTab=documents .
Tabcorp Disclosure Letter	a letter identified as such provided by Tabcorp to Tatts and countersigned by Tatts prior to entry into this deed.



Term	Meaning
Tabcorp Disclosure Materials	<ol style="list-style-type: none"> 1 the documents and information contained in the Tabcorp Data Room made available by Tabcorp to Tatts and its Related Persons prior to entry into this deed, the index of which has been initialled by, or on behalf of, the parties for identification; 2 written responses from Tabcorp and its Related Persons to requests for further information made by Tatts and its Related Persons prior to the entry into this deed; and 3 the Tabcorp Disclosure Letter.
Tabcorp Group	<p>Tabcorp and each of its Subsidiaries, and a reference to a 'Tabcorp Group Member' or a 'member of the Tabcorp Group' is to Tabcorp or any of its Subsidiaries.</p>
Tabcorp Indemnified Parties	<p>Tabcorp, its Subsidiaries and their respective directors, officers and employees.</p>
Tabcorp Information	<p>information regarding the Tabcorp Group, and the Merged Entity following implementation of the Scheme, provided by Tabcorp to Tatts in writing for inclusion in the Scheme Booklet, being:</p> <ol style="list-style-type: none"> 1 a letter from Tabcorp's Chairman; 2 information about Tabcorp, other Tabcorp Group Members, the businesses of the Tabcorp Group, Tabcorp's interests and dealings in Tatts Shares and Tabcorp's intentions for Tatts and Tatts' employees; and 3 any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is 'Tabcorp Information' and that is identified in the Scheme Booklet as such.
Tabcorp Registry	<p>Link Market Services Limited ABN 54 083 214 537 of Tower 4, Collins Square, 727 Collins Street, Melbourne, VIC, Australia 3000.</p>
Tabcorp Reimbursement Fee	<p>a Reimbursement Fee payable by Tabcorp in accordance with clause 14.</p>
Tabcorp Representations and Warranties	<p>the representations and warranties of Tabcorp set out in Schedule 1.</p>
Tabcorp Shares	<p>fully paid ordinary shares in the capital of Tabcorp.</p>



Term	Meaning
Tatts Consolidated Tax Group	the consolidated group of which Tatts is the head company (where 'consolidated group' and 'head company' have the same meaning as in the Tax Act).
Tatts Board	the board of directors of Tatts and a 'Tatts Board Member ' means any director of Tatts comprising part of the Tatts Board.
Tatts Data Room	the online data room established by Tatts which is accessed at: https://dataroom.ansarada.com/nelson .
Tatts Disclosure Letter	a letter identified as such provided by Tatts to Tabcorp and countersigned by Tabcorp prior to entry into this deed.
Tatts Disclosure Materials	<ol style="list-style-type: none"> 1 the documents and information contained in the Tatts Data Room made available by Tatts to Tabcorp and its Related Persons prior to entry into this deed, the index of which has been initialled by, or on behalf of, the parties for identification; 2 written responses from Tatts and its Related Persons to requests for further information made by Tabcorp and its Related Persons prior to the entry into this deed; and 3 the Tatts Disclosure Letter.
Tatts Group	Tatts and each of its Subsidiaries, and a reference to a ' Tatts Group Member ' or a ' member of the Tatts Group ' is to Tatts or any of its Subsidiaries.
Tatts Group Rights Plan	means the Tatts Group Rights Plan adopted by Tatts Group on 26 June 2014 and the Tatts Long Term Executive Performance Plan as re-adopted by the Tatts Group on 29 September 2016.
Tatts Indemnified Parties	Tatts, its Subsidiaries and their respective directors, officers and employees.
Tatts Information	information regarding the Tatts Group prepared by Tatts for inclusion in the Scheme Booklet, which for the avoidance of doubt comprises the entirety of the Scheme Booklet but does not include the Tabcorp Information, the Independent Expert's Report, any investigating accountant's report or other report or opinion prepared by an external adviser to Tatts.
Tatts Registry	Computershare Investor Services Pty Limited ABN 48 078 279 277 of 117 Victoria Street, West End, QLD, Australia 4101.



Term	Meaning
Tatts Reimbursement Fee	a Reimbursement Fee payable by Tatts in accordance with clause 14.
Tatts Representations and Warranties	the representations and warranties of Tatts set out in Schedule 2.
Tatts Share	a fully paid ordinary share in the capital of Tatts.
Tatts Shareholder	a person who is registered as the holder of a Tatts Share in the Tatts Share Register.
Tatts Share Register	the register of members of Tatts maintained by the Tatts Registry in accordance with the Corporations Act.
Tatts Special Dividend	has the meaning given to that term in clause 6.3.
Tatts Special Dividend Record Date	has the meaning given to that term in clause 6.3(a).
Tax	any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, stamp, transaction or registration duty or similar charge that is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above.
Tax Act	the <i>Income Tax Assessment Act 1997</i> (Cth).
Third Party	a person other than Tatts, Tabcorp or their respective Related Bodies Corporate or Associates.
Timetable	the indicative timetable for the implementation of the Transaction agreed between and initialled by the parties' lawyers for the purposes of identification on or about the date of this deed.
Transaction	the acquisition of the Scheme Shares by Tabcorp through implementation of the Scheme in accordance with the terms of this deed.



1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (l) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (m) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (n) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (o) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;



- (q) a reference to any time, unless otherwise indicated, is to the time in Melbourne, Australia;
- (r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (s) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (t) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (u) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed; and
- (v) a reference to the Listing Rules and the Operating Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.3 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Deed components

This deed includes any schedule.

1.6 Awareness

Where a representation or warranty is given so far as a party 'is aware' or with a similar qualification as to awareness or knowledge, the awareness or knowledge of a party is limited to and deemed only to comprise those facts, matters or circumstances of which that party's Chairperson, Chief Executive Officer or Managing Director, Chief Financial Officer, General Counsel or any other direct report to a party's Chief Executive Officer or Managing Director is aware or ought reasonably to be aware, as at the date of this deed.

2 Agreement to proceed with the Transaction

- (a) Tatts agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- (b) Tabcorp agrees to assist Tatts to propose the Scheme on and subject to the terms and conditions of this deed.
- (c) Tatts and Tabcorp agree to implement the Scheme on and subject to the terms and conditions of this deed.



3 Conditions Precedent and pre-implementation steps

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties under clause 4 are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **Regulatory Approvals:** before 5.00pm on the Business Day before the Second Court Date:
- (1) **Competition approvals:** either:
 - (A) Tabcorp has received, either unconditionally or on terms and conditions that are acceptable to both parties acting reasonably, by notice in writing from the ACCC stating, or stating to the effect, that, based on the information before it and other matters noted, the ACCC does not propose to intervene or seek to prevent the acquisition of Tatts Shares by Tabcorp and that notice has not been withdrawn, revoked or amended;
 - (B) authorisation of the acquisition of Tatts Shares by Tabcorp is granted by the Australian Competition Tribunal under Part VII of the CCA and no application has been made for judicial review of the decision of the Tribunal within the prescribed period; or
 - (C) the Federal Court of Australia declares or makes orders to the effect that the acquisition of Tatts Shares by Tabcorp will not contravene section 50 of the CCA; and
 - (2) **Other regulatory approvals:** the parties obtain the approval of, or consent from, each of the relevant counterparties to those registrations, contracts, licences, permits or authorisations listed in the document agreed by the parties on or about the date of this deed, either unconditionally or on terms and conditions that are acceptable to both parties acting reasonably (and terms and conditions that do not impose unduly onerous obligations or conditions on a party, or any director or officer of a party, and which would not materially adversely affect the business of the Merged Entity will be regarded as reasonable), in order to:
 - (A) permit the appointment of the directors to the Tatts Board under clause 7.2; and
 - (B) otherwise take all steps necessary to implement the Scheme.
- (b) **Shareholder approval:** Tatts Shareholders agree to the Scheme at the Scheme Meeting by the requisite majorities under subparagraph 411(4)(a)(ii) of the Corporations Act.
- (c) **Court approval:** the Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act.
- (d) **New Tabcorp Shares:** the New Tabcorp Shares to be issued pursuant to the Scheme are approved for official quotation by ASX by 8.00 am on the Second Court Date (provided that any such approval may be subject to customary conditions).



3.2 Reasonable endeavours

- (a) Each party must, to the extent it is within their power to do so, use its reasonable endeavours to procure that:
- (1) the Conditions Precedent in clause 3.1 are satisfied as soon as practicable after the date of this deed; and
 - (2) there is no occurrence within its control or the control of any of its subsidiaries that would prevent any of the Conditions Precedent being or remaining satisfied.
- (b) Without limiting this clause 3.2 but subject to the Confidentiality Agreement, each party must:
- (1) promptly apply for all relevant Regulatory Approvals (as applicable) and provide to the other party a copy of all those applications;
 - (2) take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information from the relevant Government Agencies at the earliest practicable time;
 - (3) keep the other party informed of progress in relation to each Regulatory Approval (including in relation to any material matters raised by, or conditions or other arrangements proposed by, or to, any Government Agency in relation to a Regulatory Approval) and provide the other party with all information reasonably requested in connection with the applications for, or progress of, the Regulatory Approvals;
 - (4) consult with the other party in advance in relation to the progress of obtaining, and all material communications with Government Agencies regarding any of, the Regulatory Approvals; and
 - (5) provide the other party with all assistance and information that it reasonably requests in connection with an application for a Regulatory Approval to be lodged by that other party,
- provided that:
- (6) either party may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party, or commercially sensitive and confidential to that party or subject to legal professional privilege in favour of that party;
 - (7) neither party is required to disclose materially commercially sensitive information to the other party; and
 - (8) the party applying for a Regulatory Approval is not prevented from taking any step (including communicating with a Government Agency) in respect of a Regulatory Approval if the other party has unduly delayed responding under clause 3.2(b)(4) and has been notified of same.
- (c) Without in any way limiting the obligations of the parties as contained in clauses 3.2(a) and 3.2(b), in relation to procuring that the Condition Precedent in clause 3.1(a)(1) is satisfied as soon as practicable after the date of this deed, the parties agree as follows:
- (1) that competition approval is to be pursued by the parties as a joint exercise, and in that regard, both parties will dedicate all resources necessary to secure the approval (acting reasonably), and at all times work co-operatively and together, and in good faith; and



- (2) as soon as practicable after the date of this deed, the parties will develop and agree a written work plan (**Competition Approval Work Plan**), which document will set out the means by which the parties agree to jointly secure competition approval. Consistent with the obligation on the parties to work co-operatively, together and in good faith, if either party considers that the Competition Approval Work Plan should be amended or updated so as to reflect developments in the process of securing competition approval, the parties agree to discuss those amendments in good faith and where agreed the Competition Approval Work Plan will be amended accordingly. The Competition Approval Work Plan (as amended from time to time) will form a binding part of this deed.

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clause 3.1 cannot be waived, unless both parties agree in writing.
- (b) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
- (1) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
 - (2) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

3.4 Termination on failure of Condition Precedent

- (a) If:
- (1) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied;
 - (2) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied by the time and date specified in this deed for the satisfaction of that Condition Precedent; or
 - (3) it becomes more likely than not that the Scheme will not become Effective by the End Date,
- the parties must consult in good faith to:
- (4) consider and, if agreed, determine whether the Transaction may proceed by way of alternative means or methods;
 - (5) consider and, if agreed, change the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Tabcorp and Tatts (being a date no later than 5 Business Days before the End Date); or
 - (6) consider and, if agreed, vary the relevant date provided that neither party shall be under any obligation to extend the End Date.
- (b) Subject to clauses 3.4(d), 3.4(e) and 3.4(f), if the parties are unable to reach agreement under clause 3.4(a) by the earlier of:
- (1) 5 Business Days after becoming aware of the relevant event or occurrence that would, or does, prevent a Condition Precedent being satisfied;



- (2) 5 Business Days after the time and date specified in this deed for the satisfaction of a Condition Precedent; or
- (3) the End Date,

as appropriate, then, unless that Condition Precedent has been waived in accordance with clause 3.3, either party may terminate this deed without any liability to the other party because of that termination. However, a party may not terminate this deed pursuant to this clause 3.4(b) if the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach of clauses 3.2 or 3.5 by that party, although in such circumstances the other party may still terminate this deed. For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of either party to pay the Reimbursement Fee or the Competition Approval Reimbursement Fee, if it is required to do so under clause 14.

- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of clause 15.3), on termination of this deed, no party shall have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued prior to termination.
- (d) If the Condition Precedent in clause 3.1(b) is not satisfied only because of a failure to obtain the majority required by sub-subparagraph 4.11(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-subparagraph, provided the party has, in good faith, reasonably formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the Condition Precedent in clause 3.1(b) is deemed to be satisfied for all purposes.
- (e) If the Court refuses to make an order approving the Scheme which satisfies the Condition Precedent in clause 3.1(c), at Tabcorp's request Tatts must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent Queen's Counsel or Senior Counsel indicates that, in his or her view, an appeal would have negligible prospects of success before the End Date). Tatts may bring an appeal even if not requested by Tabcorp.
- (f) If:
 - (1) an application is made to the Australian Competition Tribunal for the authorisation of the acquisition of Tatts Shares by Tabcorp under Part VII of the CCA;
 - (2) the Australian Competition Tribunal rejects the application before the End Date; and
 - (3) the Queen's Counsel or Senior Counsel jointly briefed by the parties has advised that, in his or her view, there is no reasonable prospect of success of an application for review or appeal in sufficient time for the Scheme to become Effective before the End Date,

then either party may terminate this deed by written notice to the other without any liability to the other party because of that termination, other than the payment by Tabcorp of the Competition Approval Reimbursement Fee if it is required to do so under clause 14.



3.5 Certain notices relating to Conditions Precedent

- (a) Tatts and Tabcorp (as the case may be) must promptly advise each other, orally and in writing, of satisfaction of a Condition Precedent.
- (b) If a Condition Precedent is not satisfied by the time and date specified for satisfaction of that Condition Precedent, then, unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date, Tatts must make an application to defer the Second Court Date until such time (being not later than the Business Day before the End Date) as reasonably required to enable the relevant Condition Precedent to be satisfied.
- (c) If, before the time and date specified for satisfaction of a Condition Precedent, an event or occurrence that will prevent that Condition Precedent being satisfied occurs, the party with knowledge of that event must give the other party written notice of that event or occurrence as soon as possible.
- (d) Tatts and Tabcorp (as the case may be) must promptly advise each other, orally and in writing, of any fact, matter, change, event or circumstance causing, or which, so far as can reasonably be foreseen, would cause:
 - (1) a representation or warranty provided in this deed by the relevant party to be false or misleading in any material respect;
 - (2) a breach or non-satisfaction of any of the Conditions Precedent; or
 - (3) a material breach of this deed by the relevant party.

4 Transaction steps

4.1 Scheme

Tatts must propose the Scheme to Tatts Shareholders.

4.2 Scheme Consideration

- (a) Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms of this deed and the Scheme.
- (b) Subject to clause 4.2(c) and the terms of the Scheme, Tabcorp undertakes and warrants to Tatts (in its own right and separately as trustee and nominee for each of the Scheme Shareholders) that, in consideration of the transfer to Tabcorp of each Tatts Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date Tabcorp will:
 - (1) accept that transfer; and
 - (2) provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with the terms of this deed and the Scheme.
- (c) Where the calculation of the number of New Tabcorp Shares to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a New Tabcorp Share, then the fractional entitlement will be rounded to the nearest whole number of New Tabcorp Shares, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of New Tabcorp Shares, and any such



fractional entitlement of 0.5 or more being rounded up to the nearest whole number of New Tabcorp Shares.

- (d) Where the issue of a New Tabcorp Share to which a Scheme Shareholder would otherwise be entitled under the Scheme would result in a breach of law or a breach of a provision of the Tabcorp Constitution, Tabcorp will on the Implementation Date:
- (1) issue the maximum possible number of New Tabcorp Shares to the Scheme Shareholder without giving rise to a breach;
 - (2) issue the remaining New Tabcorp Shares to which the Scheme Shareholder would otherwise be entitled to a nominee appointed by Tabcorp;
 - (3) procure that, as soon as reasonably practicable and in any event not more than 5 Business Days after the Implementation Date, the nominee:
 - (A) sells on the financial market conducted by ASX all of the New Tabcorp Shares issued to the nominee under clause 4.2(d)(2) in such manner, at such price and on such other terms as the nominee determines in good faith (and at the risk of the relevant Scheme Shareholder); and
 - (B) remits to Tabcorp the proceeds of sale (after deduction of any applicable brokerage and other selling costs, taxes and charges); and
 - (4) promptly after the last sale of New Tabcorp Shares in accordance with clause 4.2(d)(3)(A), pays to each relevant Scheme Shareholder the net proceeds received by Tabcorp pursuant to clause 4.2(d)(3)(B) to which that Scheme Shareholder is entitled.

4.3 New Tabcorp Shares

Tabcorp covenants in favour of Tatts (in its own right and separately as trustee and nominee for each of the Scheme Shareholders) that:

- (a) the New Tabcorp Shares issued as Scheme Consideration will, on their issue, rank equally in all respects with all other Tabcorp Shares on issue at the Implementation Date;
- (b) the New Tabcorp Shares issued as Scheme Consideration will be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of Tabcorp Shares after the Implementation Date;
- (c) it will use all reasonable endeavours to ensure that the New Tabcorp Shares issued as Scheme Consideration will be listed for quotation on the official list of the ASX with effect from the Business Day after the Effective Date (or such later date as ASX may require), initially on a deferred settlement basis and, with effect from the Business Day following the Implementation Date, on an ordinary (T+2) settlement basis; and
- (d) on issue, each New Tabcorp Share will be fully paid and, to the extent within the control of Tabcorp, free from any Security Interest or encumbrance.



4.4 Ineligible Foreign Shareholders

- (a) Tabcorp will ensure that the New Tabcorp Shares to which an Ineligible Foreign Shareholder would otherwise have been entitled will be issued to a nominee appointed by Tabcorp.
- (b) Tabcorp will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, such nominee:
 - (1) sells on the financial market conducted by ASX all of the New Tabcorp Shares issued to the nominee pursuant to clause 4.4(a) in such manner, at such price and on such other terms as the nominee reasonably determines; and
 - (2) remits to Tabcorp the proceeds of sale (after deducting any reasonable brokerage or other selling costs, taxes and charges).
- (c) Promptly after the last sale of New Tabcorp Shares in accordance with clause 4.4(b), Tabcorp will pay to each Ineligible Foreign Shareholder the proportion of the net proceeds of sale received by Tabcorp pursuant to clause 4.4(b)(2) to which that Ineligible Foreign Shareholder is entitled.
- (d) Tabcorp must appoint the nominee on terms reasonably acceptable to Tatts at least 10 Business Days prior to the Scheme Meeting.

4.5 Provision of Tatts Share information

- (a) In order to facilitate the provision of the Scheme Consideration, Tatts must provide, or procure the provision of, to Tabcorp or a nominee of Tabcorp, a complete copy of the Tatts Share Register as at the Scheme Record Date (which must include the name, Registered Address and registered holding of each Scheme Shareholder as at the Scheme Record Date), within one Business Day after the Scheme Record Date.
- (b) The details and information to be provided under clause 4.5(a) must be provided in such form as Tabcorp, its nominee or the Tabcorp Registry may reasonably require.

4.6 No amendment to the Scheme without consent

Tatts must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Tabcorp (such consent not to be unreasonably withheld).

4.7 Excluded Tatts Shareholders

If any Tabcorp Group Member acquires any Tatts Shares after the date of this deed where permitted by the Confidentiality Agreement, then Tabcorp will notify Tatts in writing of such acquisition and the relevant Tabcorp Group Member, and thereafter that entity will not be a 'Scheme Shareholder' for the purposes of this deed and will be excluded from the operation of the Scheme.



5 Implementation

5.1 Timetable

- (a) Subject to clause 5.1(b), the parties must use their best endeavours to:
- (1) comply with their respective obligations under this clause 5; and
 - (2) take all necessary steps and exercise all rights necessary to implement the Transaction,
- in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe.

5.2 Tatts' obligations

Subject to any change of recommendation by the Tatts Board as permitted by clause 5.4, Tatts must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including each of the following:

- (a) **preparation of Scheme Booklet:** prepare and despatch the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the Listing Rules;
- (b) **directors' recommendation:** include in the Scheme Booklet a statement by the Tatts Board:
- (1) unanimously recommending that Tatts Shareholders vote in favour of the Scheme in the absence of a Superior Proposal; and
 - (2) that each Tatts Board Member will (in the absence of a Superior Proposal) vote, or procure the voting of, any Tatts Shares held by or on their behalf at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,
- unless there has been a change of recommendation permitted by clause 5.4;
- (c) **paragraph 411(17)(b) statement:** apply to ASIC for the production of:
- (1) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
 - (2) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **Court direction:** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing Tatts to convene the Scheme Meeting;
- (e) **Scheme Meeting:** convene the Scheme Meeting to seek Tatts Shareholders' agreement to the Scheme in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act and must not request the



approval of the Court to change the date of the Scheme Meeting without obtaining the prior approval of Tabcorp (such approval not to be unreasonably withheld or delayed, except where there is a Competing Proposal in respect of Tatts);

- (f) **Court documents:** consult with Tabcorp in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from Tabcorp and its Related Persons on those documents;
- (g) **Court approval:** (subject to all Conditions Precedent in clause 3.1, other than the Condition Precedent in clause 3.1(c), being satisfied or waived in accordance with this deed) apply to the Court for orders approving the Scheme as agreed to by the Tatts Shareholders at the Scheme Meeting;
- (h) **Certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(c)) have been satisfied or waived in accordance with this deed. A draft of such certificate shall be provided by Tatts to Tabcorp by 4.00 pm on the date that is 3 Business Days prior to the Second Court Date;
- (i) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with subsection 411(10) of the Corporations Act approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Tabcorp);
- (j) **Scheme Consideration:** if the Scheme becomes Effective, finalise and close the Tatts Share Register as at the Scheme Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll;
- (k) **transfer and registration:** if the Scheme becomes Effective and subject to Tabcorp having issued the Scheme Consideration in accordance with the Scheme and Deed Poll:
 - (1) execute, on behalf of Scheme Shareholders, instruments of transfer of Tatts Shares held by Scheme Shareholders to Tabcorp; and
 - (2) register all transfers of Tatts Shares held by Scheme Shareholders to Tabcorp on the Implementation Date;
- (l) **Merged Entity information:** prepare and promptly provide to Tabcorp any information regarding the Tatts Group that Tabcorp reasonably requires in order to prepare the information regarding the Merged Entity following implementation of the Scheme for inclusion in the Scheme Booklet;
- (m) **consultation with Tabcorp in relation to Scheme Booklet:** consult with Tabcorp as to the content and presentation of the Scheme Booklet including:
 - (1) providing to Tabcorp drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling Tabcorp to review and comment on those draft documents;
 - (2) taking all comments made by Tabcorp into account in good faith when producing a revised draft of the Scheme Booklet;
 - (3) providing to Tabcorp a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable



- Tabcorp to review the Regulator's Draft before the date of its submission;
- (4) obtaining written consent from Tabcorp for the form and content in which the Tabcorp Information appears in the Scheme Booklet; and
 - (5) confirming in writing to Tabcorp the accuracy of the Tatts Information in the Scheme Booklet;
- (n) **information:** provide all necessary information, and procure that the Tatts Registry provides all necessary information, in each case in a form reasonably requested by Tabcorp, about the Scheme, the Scheme Shareholders and Tatts Shareholders to Tabcorp and its Related Persons, which Tabcorp reasonably requires in order to:
- (1) understand the legal and beneficial ownership of Tatts Shares (including the results of directions by Tatts to Tatts Shareholders under Part 6C.2 of the Corporations Act);
 - (2) facilitate the provision by, or on behalf of, Tabcorp of the Scheme Consideration; or
 - (3) review the tally of proxy appointments and directions received by Tatts prior to the Scheme Meeting.
- Tatts must comply with any reasonable request of Tabcorp for Tatts to give directions to Tatts Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time (at Tabcorp's expense) for one of the purposes referred to in (1) or (2) above;
- (o) **ASIC and ASX review:** keep Tabcorp informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by Tabcorp;
 - (p) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
 - (q) **Independent Expert:**
 - (1) promptly appoint the Independent Expert, and any investigating accountant to be appointed in connection with the preparation of the Scheme Booklet or the Independent Expert's Report, and provide all assistance and information reasonably requested by them in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto); and
 - (2) if, after the date of public release of the initial Independent Expert's Report, Tatts proposes to provide any new or additional information to the Independent Expert, provide a copy of that information to Tabcorp and consult with Tabcorp in relation to that information, including by having regard to (in good faith) all comments from Tabcorp in relation to that information;
 - (r) **assistance:** up to the Implementation Date and subject to the Confidentiality Agreement and the obligations of confidentiality owed to third parties and undertakings to Government Agencies, provide Tabcorp and its Related Persons with reasonable access during normal business hours to information and personnel of Tatts Group that Tabcorp reasonably requests for the purpose



of collation and provision of the Tabcorp Information and implementation of the Transaction;

- (s) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (t) **listing:** subject to clause 5.2(w), not do anything to cause Tatts Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction unless Tabcorp has agreed in writing;
- (u) **update Scheme Booklet:** until the date of the Scheme Meeting and after consulting with Tabcorp, promptly update the Scheme Booklet with any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (v) **promote Transaction:** subject to the Confidentiality Agreement, participate in efforts reasonably requested by Tabcorp to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Tatts Shareholders or Tabcorp Shareholders at the reasonable request of Tabcorp and providing Tabcorp with such information and assistance that Tabcorp reasonably requests to enable it to promote the merits of the Transaction; and
- (w) **suspension of trading:** apply to ASX to suspend trading in Tatts Shares with effect from the close of trading on the Effective Date.

5.3 Tabcorp's obligations

Tabcorp must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including doing each of the following:

- (a) **Tabcorp Information:** prepare and promptly provide to Tatts the Tabcorp Information for inclusion in the Scheme Booklet, including all information regarding the Tabcorp Group, the Merged Entity following implementation of the Scheme, and the Scheme Consideration required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the Listing Rules, and consent to the inclusion of that information (other than any information provided by Tatts to Tabcorp or obtained from Tatts' public filings on ASX regarding the Tatts Group contained in, or used in the preparation of, the information regarding the Merged Entity following implementation of the Scheme) in the Scheme Booklet;
- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Tatts and provide comments on those drafts in good faith;
- (c) **Independent Expert's Report:**
 - (1) provide any assistance or information reasonably requested by Tatts or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet; and
 - (2) if, after the date of public release of the initial Independent Expert's Report, Tabcorp proposes or is requested to provide any new or additional information to the Independent Expert, provide a copy of that information to Tatts; and



- (3) promptly review, consult with and provide comments (if any) on any new or additional information which Tatts proposes to provide to the Independent Expert under clause 5.2(q)(2);
- (d) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (e) **Deed Poll:** by no later than the Business Day prior to the First Court Date, execute and deliver to Tatts the Deed Poll;
- (f) **accuracy of Tabcorp Information:** confirm in writing to Tatts the accuracy of the Tabcorp Information in the Scheme Booklet (other than any information regarding the Tatts Group contained in, or used in the preparation of, the information regarding the Merged Entity following implementation of the Scheme), including that it does not contain any material statement that is false or misleading in a material respect, whether because of any material omission from that statement or otherwise;
- (g) **share transfer:** if the Scheme becomes Effective:
 - (1) accept a transfer of the Scheme Shares as contemplated by clause 4.2(b)(1); and
 - (2) execute instruments of transfer in respect of the Scheme Shares;
- (h) **Scheme Consideration:** if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (i) **update Tabcorp Information:** until the date of the Scheme Meeting, provide to Tatts any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Tabcorp Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (j) **assistance:** up to (and including) the Implementation Date and subject to the Confidentiality Agreement and the obligations of confidentiality owed to third parties and undertakings to Government Agencies, provide Tatts and its Related Persons with reasonable access during normal business hours to information and personnel of Tabcorp Group that Tatts reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Transaction;
- (k) **Tax:** provide Tatts with such assistance and information as may reasonably be requested by Tatts for the purposes of obtaining from the Australian Taxation Office rulings in a form reasonably acceptable to both parties confirming the availability of scrip-for-scrip rollover relief in respect of the New Tabcorp Shares and that the Tatts Special Dividend can be fully franked;
- (l) **promote Transaction:** subject to the Confidentiality Agreement, participate in efforts reasonably requested by Tatts to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Tatts Shareholders at the reasonable request of Tatts and providing Tatts with such information and assistance that Tatts reasonably requests to enable it to promote the merits of the Transaction; and
- (m) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.



5.4 Tatts Board recommendation

- (a) Tatts must procure that, subject to clause 5.4(b), each member of the Tatts Board unanimously recommends that Tatts Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of Scheme Shareholders, and that the Scheme Booklet include a statement by the Tatts Board to that effect.
- (b) Tatts must procure that the Tatts Board collectively, and the members of the Tatts Board individually, do not change, withdraw or modify its, his or her recommendation to vote in favour of the Scheme unless:
- (1) the Independent Expert's Report concludes that the Scheme is not in the best interests of Scheme Shareholders (other than where the conclusion is due wholly or partly to the existence of a Competing Proposal); or
 - (2) Tatts has entered into a legally binding agreement to undertake or give effect to, other than as a result of a breach of clause 13, a Superior Proposal,
- and Tatts has complied with its obligations under clause 13.
- (c) For the purposes of this clause 5.4, customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Scheme, including to the effect that:
- (1) the recommendation is made in the absence of a Superior Proposal; and
 - (2) the recommendation is made subject to the Independent Expert concluding and continuing to conclude in the Independent Expert's Report that the Transaction is in the best interests of Tatts' Shareholders,
- will not be regarded as a failure to make or a withdrawal of a recommendation in favour of the Scheme.
- (d) For the purposes of this clause 5.4, a statement to the effect that a specific alternative transaction may be pursued in the interests of Tatts Shareholders if the Scheme does not proceed will be regarded as a failure to make a recommendation to vote in favour of the Scheme and, if made subsequently, will be regarded as a modification of a recommendation to vote in favour, unless Tabcorp agrees to the making of such statement.

5.5 Responsibility statements

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
- (1) Tabcorp is responsible for the Tabcorp Information (other than any information provided by Tatts to Tabcorp or obtained from Tatts' public filings on ASX regarding the Tatts Group contained in, or used in the preparation of, the information regarding the Merged Entity following implementation of the Scheme) contained in the Scheme Booklet; and
 - (2) Tatts is responsible for the Tatts Information contained in the Scheme Booklet and is also responsible for the information contained in the Scheme Booklet provided by Tatts to Tabcorp or obtained from Tatts' public filings on ASX regarding the Tatts Group contained in, or used



in the preparation of, the information regarding the Merged Entity following implementation of the Scheme.

- (b) If after 5 Business Days of consultation, Tatts and Tabcorp are unable to agree on the form or content of the Scheme Booklet:
 - (1) where the determination relates to Tabcorp Information, Tabcorp will make the final determination, acting reasonably, as to the form and content of the Tabcorp Information; and
 - (2) in any other case, the final determination as to the form and content of the Scheme Booklet will be made by Tatts, acting reasonably, provided that, if Tabcorp disagrees with such final form and content, Tatts must include a statement to that effect in the Scheme Booklet.

5.6 Conduct of Court proceedings

In respect of Court proceedings under Part 5.1 of the Corporations Act:

- (a) Tatts and Tabcorp are entitled to separate representation at such Court proceedings.
- (b) This deed does not give Tatts or Tabcorp any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) Tatts and Tabcorp must give all undertakings to the Court in such Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

5.7 Executive Incentive Arrangements

- (a) In accordance with the Tatts Group Rights Plan, each Performance Right on issue at the Record Date will be cancelled and replaced on the Implementation Date with a grant by Tabcorp to each Performance Right holder of:
 - (1) rights to acquire 0.80 New Tabcorp Shares per Performance Right held, on terms equivalent to the terms of issue of the Performance Right, including:
 - (A) conversion into a New Tabcorp Share on the same date that the Performance Right would have converted into a Restricted Share under the Tatts Group Rights Plan;
 - (B) each New Tabcorp Share is to be subject to a holding lock for two years from the date of issue; and
 - (C) if the holder ceases to be employed by the Merged Entity during the two year trading restriction period, the holder will be entitled to retain the relevant New Tabcorp Shares, subject to the trading restrictions continuing to apply and subject to the rules of the Tatts Group Rights Plan, plus:
 - (2) a payment of \$0.425 cash per Performance Right held (adjusted for the Tatts Special Dividend), which cash payment will be held in an escrow account which escrow will be released on the same date upon which the holding lock referred to in clause 5.7(a)(1)(B) is released. If the holder ceases to be employed by the Merged Entity during the two year restriction period, the holder will be entitled to receive the cash payment, subject to the cash being retained in an escrow account for the period of the trading restriction.



- (b) Each Restricted Share on issue at the Record Date will be acquired by Tabcorp under the Scheme in exchange for the issue by Tabcorp on the Implementation Date of 0.80 New Tabcorp Shares and payment of \$0.425 cash per Restricted Share held (adjusted for the Tatts Special Dividend), which:
- (1) in the case of New Tabcorp Shares, will be subject to a holding lock and trading restriction which will terminate on the same date as the holding lock and trading restriction as applied before the exchange; and
 - (2) in the case of the cash component, will be held in an escrow account which escrow will be released on the same date as the holding lock referred to in clause 5.7(b)(1) terminates. If a New Tabcorp Share issued under this clause 5.7(b) is forfeited in accordance with the terms upon which it is issued, then the relevant shareholder will not be entitled to receive the cash component.
- (c) The board of the Merged Entity will have the same powers as the Tatts Board under the Tatts Group Rights Plan to determine how rights and shares of departing employees will be dealt with after the Implementation Date, though the intention is that, in the absence of exceptional circumstances, employees who depart as 'good leavers' (such as a result of redundancy, termination without cause, death or total and permanent disablement) will be allowed to retain the benefit of their rights and shares, despite leaving the Merged Entity before the expiry of time related restriction periods.
- (d) The parties:
- (1) must use all reasonable endeavours to ensure that the replacement Performance Rights and Restricted Shares proposed to be issued in accordance with clauses 5.7(a) and 5.7(b) respectively, will be structured so as to be reasonably regarded as 'matching' the existing Performance Rights and Restricted Shares to satisfy the requirements of section 83A-130 of the *Income Tax Assessment Act 1997* (Cth);
 - (2) must use all reasonable endeavours to give effect to the proposed treatment of the Performance Rights and Restricted Shares as set out in this clause 5.7. Tatts must provide Tabcorp with drafts of all documentation to be used to inform holders of Performance Rights and Restricted Shares about the proposed treatment of their rights and shares (and take account of comments made by Tabcorp on such documentation); and
 - (3) acknowledge and agree that this clause 5.7 is subject to the matters set out in the Tatts Disclosure Letter.

6 Conduct of business and Permitted Dividends

6.1 Conduct of business

- (a) Subject to clauses 6.1(b) and 6.1(c), from the date of this deed up to and including the Implementation Date, and without limiting any other obligations of either party under this deed, each party must:
- (1) conduct its businesses and operations, and must cause each of its subsidiaries to conduct its respective business and operations, in the ordinary and usual course generally consistent with the manner in



- which each such business and operations have been conducted in the 12 month period prior to the date of this deed;
- (2) subject to the Confidentiality Agreement, keep the other party informed of any material developments concerning the conduct of business;
 - (3) not enter into any line of business or other activities in which it or its subsidiaries is not engaged as of the date of this deed;
 - (4) subject to the Protocols, provide regular reports on the financial affairs of the party, including the provision of the party's monthly management accounts, in a timely manner to the other party;
 - (5) use its reasonable endeavours to procure that between (and including) the date of this deed and 8.00am on the Second Court Date:
 - (A) there is no Prescribed Occurrence in relation to the party; and
 - (B) there is no occurrence within its control or the control of any of its subsidiaries that would constitute or be likely to constitute a Material Adverse Change in relation to the party; and
 - (6) make all reasonable efforts, and procure that each of its subsidiaries makes all reasonable efforts, to:
 - (A) preserve and maintain the value of the businesses and assets of the group;
 - (B) keep available the services of the directors, officers and employees of each member of the group; and
 - (C) maintain and preserve their relationships with Government Agencies, customers, suppliers and others having business dealings with any group member.
- (b) Without limiting clause 6.1(a), each party must not, and must ensure that its subsidiaries do not:
- (1) declare, pay or distribute any dividend, bonus or other share of its profits or assets or return or agree to return any capital to its members, other than a Permitted Dividend or as between Tatts Group Members in order for the Tatts Board to be able to declare and pay a Permitted Dividend;
 - (2) make any change to its constitution;
 - (3) acquire, lease or dispose of (or agree to acquire, lease or dispose of) any securities, business, assets, interest in any joint venture, entity or undertaking, the value of which exceeds \$55,000,000 (individually or in aggregate);
 - (4) enter into any contract or commitment for operational expenditure requiring payments by the group in excess of \$50,000,000 (individually or in aggregate for the life of the relevant contract or commitment);
 - (5) incur capital expenditure from the date of this deed of an amount which exceeds by 10% the FY17 budgeted capital expenditure figure for the party (as disclosed in the Disclosure Materials) on an annualised basis;



- (6) other than as contemplated by clause 5.7, accelerate the rights of any of their employees to compensation or benefits of any kind (including under any option, performance right, incentive or share plan);
 - (7) enter into or materially alter, vary or amend any employment, consultant, severance or similar agreement or arrangement with any person, including any of its officers, directors, other executives or employees whose total employment cost exceeds (or would exceed in the case of an agreement or arrangement not on foot on the date of this deed) \$750,000 (**Key Person**), or accelerating or otherwise materially increasing compensation, benefits or entitlements for any Key Person, in each case other than pursuant to entitlements in effect on the date of this deed;
 - (8) enter into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this deed;
 - (9) change any accounting policy applied to a party to report its financial position other than any change in policy required by a change in accounting standards;
 - (10) do anything that would result in a change in the Tabcorp Consolidated Tax Group or the Tatts Consolidated Tax Group, as the case may be;
 - (11) authorise, commit or agree to do any of the matters set out above; or
 - (12) in the case of Tatts only, vary any of the retention arrangements (in terms or in scope) described in the Tatts Disclosure Letter without the prior approval of Tabcorp.
- (c) Nothing in clauses 6.1(a) or 6.1(b) restricts the ability of a party to take any action or inaction:
- (1) which is required by any applicable law (including the CCA) or Government Agency (including any undertakings required by a Government Agency);
 - (2) which is required by the Confidentiality Agreement (including the Protocols);
 - (3) which is required or expressly permitted by this deed or the Scheme, including for the avoidance of doubt actions to give effect to a Superior Proposal;
 - (4) which has been agreed to in writing by the other party (not to be unreasonably withheld or delayed);
 - (5) which is Fairly Disclosed in the Tabcorp Disclosure Materials or the Tatts Disclosure Materials as being an action that the party intends to carry out between (and including) the date of this deed and the Implementation Date;
 - (6) in relation to acquiring, agreeing to acquire or offering to acquire the assets (or any entity which owns the assets) of the Western Australian TAB conducted by Racing and Wagering Western Australia; or
 - (7) in relation to becoming, agreeing to become or applying or offering to become the licensee under a public lottery licence within the meaning of the *Gambling Regulation Act 2003* (Vic).
- (d) From the date of this deed until the Second Court Date, each party will promptly notify the other orally and in writing of anything of which it becomes aware that:



- (1) makes any material information publicly filed by the party (either on its own account or in respect of any other group member) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;
- (2) makes any of its Representations and Warranties false, inaccurate, misleading or deceptive in any material respect;
- (3) makes any information provided in the Tabcorp Disclosure Materials or the Tatts Disclosure Materials (as the case may be) incomplete, incorrect, untrue or misleading in any material respect; or
- (4) would constitute or be likely to constitute a Prescribed Occurrence or a Material Adverse Change in relation to the party.

6.2 Permitted Ordinary Course Dividends

- (a) After 31 December 2016 and before 1 July 2017, Tabcorp may pay a fully franked dividend in an amount not exceeding 12.5 cents per Tabcorp Share and Tatts may pay a fully franked dividend in an amount not exceeding 9.5 cents per Tatts Share, in each case prior to the Implementation Date.
- (b) After 1 July 2017 and before 31 December 2017, Tabcorp may pay an additional fully franked dividend in an amount not exceeding 12.5 cents per Tabcorp Share and Tatts may pay an additional fully franked dividend in an amount not exceeding 8 cents per Tatts Share, in each case prior to the Implementation Date.
- (c) If the Scheme has not become Effective by the End Date, each party may pay a dividend to its shareholders in the ordinary course and consistent with past practice (including as to franking).
- (d) On the date of this deed, each party will suspend the operation of its dividend reinvestment plan.

6.3 Tatts Special Dividend

- (a) Subject to:
 - (1) the Scheme becoming Effective; and
 - (2) Tatts complying with the requirements of section 254T of the Corporations Act,

Tatts may declare and pay a cash dividend of up to \$0.25 per Tatts Share (**Tatts Special Dividend**) to all Tatts Shareholders on the Tatts Share Register on the record date for the Special Dividend (**Tatts Special Dividend Record Date**).
- (b) The Tatts Special Dividend may be fully franked, provided that the Tatts franking account does not fall into deficit upon payment of the Tatts Special Dividend (or would fall into deficit if any claimed tax refund was received).
- (c) The Tatts Special Dividend Record Date must occur before the Scheme Record Date and otherwise on a date agreed between the parties.
- (d) The cash component of the Scheme Consideration will be reduced by the cash amount of the Tatts Special Dividend.



7 Profile of Merged Entity

7.1 Tabcorp board composition

The Board of the Merged Entity will comprise those individuals who are directors of Tabcorp as at the Implementation Date and, in addition, Tabcorp will invite and, if such invitation is accepted, appoint the Chairman of Tatts as at the date of this deed to join the Board as a non-executive director of the Merged Entity on the Implementation Date.

7.2 Tatts board composition

Tatts must, as soon as practicable on the Implementation Date after the Scheme Consideration has been despatched to Scheme Shareholders:

- (a) take all actions necessary to cause the Tatts Board to be reconstituted so that it consists entirely of directors nominated by Tabcorp; and
- (b) procure that, to the extent required, all other directors on the Tatts Board resign and release Tatts from any claims they may have against Tatts (except for accrued but unpaid entitlements).

7.3 Chairman and Chief Executive Officer

The Chairman and Chief Executive Officer of the Merged Entity will be the individuals holding those positions at Tabcorp as at the date of this deed or such other individuals that the Tabcorp Board may nominate to fulfil those positions.

7.4 Senior management

Other senior management of the Merged Entity will be determined by the board of the Merged Entity as soon as practicable after the Implementation Date.

8 Integration Planning

8.1 Pre-Implementation Date Integration planning

- (a) The parties' respective managing directors will agree a date to commence working together and planning for the merger and integration of Tabcorp and Tatts from the Implementation Date.
- (b) After the date referred to in paragraph (a) above, the parties' respective managing directors may establish an integration committee consisting of members of the management teams of each of Tabcorp and Tatts and such other persons as the managing directors of each party agree from time to time.
- (c) The role of the committee (if established) is to act as a forum for the consideration and planning of the integration of the merged Tabcorp and Tatts businesses and will have such other objectives as the parties' respective managing directors may agree.
- (d) Subject to the other provisions of this deed, nothing in this clause 8.1 requires any party to act at the direction of the other or imposes any obligation on any party to conduct their respective businesses in accordance with any direction or representation made by the other and the parties acknowledge that their



obligations under this clause 8 shall be subject to the Confidentiality Agreement, the CCA and all applicable laws or requirements of any Government Agency. The parties agree that nothing in this deed constitutes the relationship of a partnership or joint venture between the parties.

8.2 Integration Due Diligence

- (a) Prior to the date of this deed, each party conducted high level due diligence enquiries regarding the business and financial position of the other. This was on the basis that, after execution of this deed, further due diligence enquiries would be facilitated.
- (b) Accordingly, subject to clause 8.2(c) between (and including) the date of this deed and the Effective Date, each party must make available to the other and its advisers:
 - (1) all information reasonably requested by the other party (subject to clause 8.2(c)(3));
 - (2) such senior executives of the other party as reasonably requested by the other at mutually convenient times; and
 - (3) afford reasonable co-operation,
 - for the purpose of:
 - (4) implementation of the Scheme;
 - (5) each party obtaining an understanding of the operations of the other party's business, financial position, prospects and affairs in order to facilitate the integration of the parties' businesses following implementation of the Scheme; or
 - (6) any other purpose agreed between the parties.
- (c) In carrying out these investigations:
 - (1) each party must focus on material issues, having regard to management commitments and the impact of such requests on each party's business;
 - (2) nothing in this clause will require a party to provide information concerning its directors' and management's consideration of the Scheme or a Competing Proposal;
 - (3) information need not be provided if that would result in unreasonable disruptions to the party's business, is commercially sensitive, is subject to an existing confidentiality obligation to a Third Party, would require a party to make further disclosures to any other entity or to a Government Agency or require a party to make any disclosure that would compromise legal privilege; and
 - (4) the parties acknowledge that their investigations and obligations under this clause 8.2 shall be subject to the Confidentiality Agreement, the CCA and all applicable laws or requirements of any Government Agency.

8.3 Change of control provisions

- (a) As soon as practicable after the date of this deed, each party must identify any change of control or unilateral termination rights in Material Contracts to which



that party or a Related Body Corporate is party which may be triggered by or exercised in response to the implementation of the Transaction.

- (b) In respect of those Material Contracts to which a Tatts Group Member is a party:
- (1) The parties will agree a proposed course of action (which, among other things, will have due regard to applicable legal restrictions) and then Tatts will initiate contact, including joint discussions if required, with the relevant landlords and counterparties and request that they provide any consents or confirmations required or appropriate. Tabcorp must not contact any landlords or counterparties without Tatts present or without Tatts' prior written consent.
 - (2) Tatts must take all reasonable action necessary to obtain such consents or confirmations in accordance with the Timetable, including by promptly providing any information reasonably required by counterparties.
 - (3) Tabcorp must cooperate with, and provide all reasonable assistance to, Tatts to obtain such consents or confirmations in accordance with the Timetable, including by promptly providing any information reasonably required by counterparties.

9 Representations and warranties

9.1 Tabcorp's representations and warranties

Tabcorp represents and warrants to Tatts (in its own right and separately as trustee or nominee for each of the other Tatts Indemnified Parties) each of the Tabcorp Representations and Warranties.

9.2 Tabcorp's indemnity

Tabcorp agrees with Tatts (in its own right and separately as trustee or nominee for each of the other Tatts Indemnified Parties) to indemnify Tatts and each of the Tatts Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Tatts or any of the other Tatts Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Tabcorp Representations and Warranties.

9.3 Qualifications on Tabcorp's representations, warranties and indemnities

The Tabcorp Representations and Warranties in clause 9.1 and the indemnity in clause 9.2, are each subject to matters that have been Fairly Disclosed in:

- (a) the Tabcorp Disclosure Materials; and
- (b) Tabcorp's announcements to ASX, or a document lodged with ASIC, in the 12 month period prior to the date of this deed.



9.4 Tatts' representations and warranties

Tatts represents and warrants to Tabcorp (in its own right and separately as trustee or nominee for each of the other Tabcorp Indemnified Parties) each of the Tatts Representations and Warranties.

9.5 Tatts' indemnity

Tatts agrees with Tabcorp (in its own right and separately as trustee or nominee for each Tabcorp Indemnified Party) to indemnify Tabcorp and each of the Tabcorp Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Tabcorp or any of the other Tabcorp Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Tatts Representations and Warranties.

9.6 Qualifications on Tatts' representations, warranties and indemnities

The Tatts Representations and Warranties in clause 9.4 and the indemnity in clause 9.5, are each subject to matters that have been Fairly Disclosed in:

- (a) the Tatts Disclosure Materials; and
- (b) Tatts' announcements to ASX, or a document lodged with ASIC, in the 12 month period prior to the date of this deed.

9.7 Survival of representations and warranties

Each representation and warranty in clauses 9.1 and 9.4:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

9.8 Survival of indemnities

Each indemnity in this deed (including those in clauses 9.2 and 9.5):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

9.9 Timing of representations and warranties

Each representation and warranty made or given under clauses 9.1 or 9.4 is given:

- (a) at the date of this deed;
- (b) at the date the Scheme Booklet is dispatched to Tatts Shareholders; and
- (c) at 8.00am on the Second Court Date,

unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.



9.10 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

10 Releases

10.1 Tatts and Tatts directors and officers

- (a) Tabcorp releases its rights, and agrees with Tatts that it will not make a claim, and after the Implementation Date will procure that a Tatts Group Member does not make a claim, against any Tatts Indemnified Party (other than Tatts and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
 - (1) any breach of any representations and warranties of Tatts or any other member of the Tatts Group in this deed; or
 - (2) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Tatts Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 10.1(a) limits Tabcorp's rights to terminate this deed under clause 15.2(a).
- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Tatts receives and holds the benefit of this clause to the extent it relates to each Tatts Indemnified Party as trustee for each of them.

10.2 Tabcorp and Tabcorp directors and officers

- (a) Tatts releases its rights, and agrees with Tabcorp that it will not make a claim, against any Tabcorp Indemnified Party (other than Tabcorp and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
 - (1) any breach of any representations and warranties of Tabcorp or any other member of the Tabcorp Group in this deed; or
 - (2) any disclosure containing any statement which is false or misleading whether in content or by omission,



whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Tabcorp Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 10.2(a) limits Tatts' rights to terminate this deed under clause 15.2(b).

- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Tabcorp receives and holds the benefit of this clause to the extent it relates to each Tabcorp Indemnified Party as trustee for each of them.

10.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Tabcorp undertakes in favour of Tatts and each other person who is a Tatts Indemnified Party that it will:
 - (1) for a period of 7 years from the Implementation Date, ensure that the constitutions of Tatts and each other Tatts Group Member continues to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Tatts Group Member; and
 - (2) procure that Tatts and each Tatts Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained for a period of 7 years from the retirement date of each director and officer (and Tatts may, at its election, pay any amounts necessary to ensure such maintenance upfront prior to the implementation of the Scheme).
- (b) The undertakings contained in clause 10.3(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (c) Tatts receives and holds the benefit of clause 10.3(a), to the extent it relates to the other Tatts Indemnified Parties, as trustee for them.

11 Public announcement

11.1 Announcement of the Transaction

- (a) Immediately after the execution of this deed, Tatts and Tabcorp must issue public announcements in a form previously agreed to in writing between them.
- (b) The Tatts announcement must include a unanimous recommendation by the Tatts Board to Tatts Shareholders that, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of Scheme Shareholders, Tatts Shareholders vote in favour of the Scheme and that subject to the same qualifications all the members of the Tatts Board intend to vote (or procure the voting of) all Tatts Shares held by or on their behalf at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting.



11.2 Subsequent announcements and disclosure

Where a party proposes to make any public announcement in connection with the Transaction or the Scheme, it must to the extent practicable and lawful to do so, consult with the other party prior to making the relevant disclosure and take account of any reasonable comments received from the other party in relation to the form and content of the announcement or disclosure.

12 Confidentiality

Tatts and Tabcorp acknowledge and agree that they continue to be bound by the Confidentiality Agreement after the date of this deed. The rights and obligations of the parties under the Confidentiality Agreement survive termination of this deed. To the extent of any inconsistency between the Confidentiality Agreement and this deed, the terms of the Confidentiality Agreement (including the Protocols) shall prevail.

13 Exclusivity

13.1 No shop and no talk

During the Exclusivity Period, Tatts must not, and must ensure that each of its Related Persons does not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 13.1(a); or
- (b) **(no talk and no due diligence)** subject to clause 13.2:
 - (1) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (2) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
 - (3) disclose or otherwise provide any non-public information about the business or affairs of the Tatts Group to a Third Party (other than a Government Agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the Tatts Group); or
 - (4) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 13.1(b),



but nothing in this clause 13.1 prevents Tatts from making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Transaction.

13.2 Fiduciary exception

Clause 13.1(b) does not prohibit any action or inaction by Tatts or any of its Related Persons in relation to any actual, proposed or potential Competing Proposal, which the Tatts Board acting in good faith determines, having regard to written advice from its external legal and financial advisers, is a Superior Proposal (or which may reasonably be expected to result in the Competing Proposal becoming a Superior Proposal), provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 13.1(a).

13.3 Notification of approaches

- (a) During the Exclusivity Period, Tatts must as soon as possible notify Tabcorp in writing if it, or any of its Related Persons, becomes aware of any:
- (1) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;
 - (2) proposal made to Tatts or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
 - (3) provision by Tatts or any of its Related Persons of any non-public information concerning the business or operations of Tatts or the Tatts Group to any Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal, whether direct or indirect, solicited or unsolicited, and in writing or otherwise.
- (b) A notification given under clause 13.3(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all terms and conditions of the actual, proposed or potential Competing Proposal.

13.4 Matching right

- (a) Without limiting clause 13.1, during the Exclusivity Period, Tatts:
- (1) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, Tatts or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
 - (2) must procure that none of its directors change their recommendation in favour of the Transaction or publicly recommend an actual, proposed or potential Competing Proposal or recommend against the Transaction (provided that a statement that no action should be taken by Tatts Shareholders pending the assessment of a Competing Proposal by the Tatts Board and its advisers shall not contravene this clause),

unless:



- (3) the Tatts Board acting in good faith and in order to satisfy what the members of the Tatts Board consider to be their statutory or fiduciary duties (having received written advice from its external financial and legal advisers) determines that the Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
 - (4) Tatts has provided Tabcorp with all terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
 - (5) Tatts has given Tabcorp at least 5 Business Days after the date of the provision of the information referred to in clause 13.4(a)(4) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
 - (6) Tatts has not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the 5 Business Day period in clause 13.4(a)(5) above.
- (b) If Tabcorp proposes to Tatts, or announces, amendments to the Scheme that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Tabcorp Counterproposal**) by the expiry of the 5 Business Day period in clause 13.4(a)(5) above, Tatts must procure that the Tatts Board considers the Tabcorp Counterproposal and if the Tatts Board, acting reasonably and in good faith, determines that the Tabcorp Counterproposal would provide an equivalent or superior outcome for Tatts Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Tabcorp Counterproposal, then Tatts and Tabcorp must use their best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Tabcorp Counterproposal and to implement the Tabcorp Counterproposal, in each case as soon as reasonably practicable, and Tatts must procure that each of the directors of Tatts continues to recommend the Transaction (as modified by the Tabcorp Counterproposal) to Tatts Shareholders.

13.5 Receipt of Competing Proposal by Tabcorp

For the avoidance of doubt, Tabcorp is not entitled to terminate this deed if it receives a Competing Proposal from a Third Party, including a proposal which if entered into or completed would result in such Third Party directly or indirectly acquiring Control of Tabcorp or otherwise acquiring or merging with Tabcorp, or for any other reason not expressly set out in clause 15 below.

13.6 No shop

During the Exclusivity Period, Tabcorp must not, and must ensure that each of its Related Persons does not, directly or indirectly solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 13.6.



13.7 Notification of approaches

- (a) During the Exclusivity Period, Tabcorp must as soon as possible notify Tatts in writing if it, or any of its Related Persons, becomes aware of any:
- (1) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;
 - (2) proposal made to Tabcorp or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
 - (3) provision by Tabcorp or any of its Related Persons of any non-public information concerning the business or operations of Tabcorp or the Tabcorp Group to any Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal,
- whether direct or indirect, solicited or unsolicited, and in writing or otherwise.
- (b) A notification given under clause 13.7(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all terms and conditions of the actual, proposed or potential Competing Proposal.

13.8 Provision of information by Tatts

- (a) Subject to clause 13.8(b), during the Exclusivity Period, Tatts must as soon as possible provide Tabcorp with:
- (1) in the case of written materials, a copy of; and
 - (2) in any other case, a written statement of,
- any material non-public information about the business or affairs of Tatts or the Tatts Group disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to Tabcorp.
- (b) Tatts will not, and will procure that none of its Related Persons provide any information to a Third Party in relation to an actual, proposed or potential Competing Proposal, unless:
- (1) permitted by clause 13.2; and
 - (2) that Third Party has entered into a confidentiality agreement with Tatts on customary terms and which is no more favourable to the Third Party than the Confidentiality Agreement (excluding the Protocols).

13.9 Compliance with law

- (a) If it is finally determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 13 or any part of it:
- (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the board of either party;
 - (2) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or



- (3) was, or is, or would be, unlawful for any other reason, then, to that extent (and only to that extent) the parties will not be obliged to comply with that provision of clause 13.
- (b) The parties must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 13.9.

14 Reimbursement Fee and Competition Approval Reimbursement Fee

14.1 Background to Reimbursement Fee and Competition Approval Reimbursement Fee

- (a) Each party acknowledges that, if they enter into this deed and the Scheme is subsequently not implemented, each party will incur significant costs, including those set out in clause 14.5.
- (b) In these circumstances, the parties have agreed that provision be made for the payments outlined in clauses 14.2, 14.3 and 14.10, without which the parties would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Tatts and the Tatts Board believe (in respect of the Tatts Reimbursement Fee) and Tabcorp and the Tabcorp Board believe (in respect of the Tabcorp Reimbursement Fee and the Competition Approval Reimbursement Fee), each having taken advice from its legal advisors and Financial Advisors, that the implementation of the Scheme will provide benefits to it and its shareholders, and that it is reasonable and appropriate that Tatts (in respect of the Tatts Reimbursement Fee) and Tabcorp (in respect of the Tabcorp Reimbursement Fee and the Competition Approval Reimbursement Fee) to agree to the payments referred to in clauses 14.2, 14.3, and 14.10 in order to secure the other party's participation in the Transaction and its agreement to implement the Scheme on the terms of this deed.

14.2 Tatts Reimbursement Fee triggers

Subject to clauses 14.6, 14.7 and 14.9, Tatts must pay the Tatts Reimbursement Fee to Tabcorp, without set-off or withholding, if:

- (a) during the Exclusivity Period, any one or more members of the Tatts Board withdraws, adversely revises or adversely qualifies his or her support of the Scheme or his or her recommendation that Tatts Shareholders vote in favour of the Scheme, or, having made such a recommendation, withdraws, adversely revises or adversely qualifies that recommendation for any reason, unless:
 - (1) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Scheme Shareholders (other than where the conclusion is due wholly or partly to the existence of a Competing Proposal); or
 - (2) Tatts is entitled to terminate this deed pursuant to clauses 15.1(a), 15.1(c)(1) or 15.2(b), and has given the appropriate termination notice to Tabcorp and the Transaction does not complete;



- (b) during the Exclusivity Period, any one or more members of the Tatts Board recommends that Tatts Shareholders accept or vote in favour of, or otherwise supports or endorses (including support by way of accepting or voting, or by way of stating an intention to accept or vote, in respect of any Tatts Shares held by or on their behalf), a Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period;
- (c) a Competing Proposal of the kind described in this paragraph is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, the Third Party or any Associate of that Third Party completes a Competing Proposal of the kind referred to in paragraphs 1 (but only where the acquisition is through an issue of new Tatts Shares), 2, 3 and 4 of the definition of Competing Proposal.
- (d) Tabcorp has terminated this deed pursuant to clauses 15.1(a)(1), 15.1(b)(1) or 15.2(a) and the Transaction does not complete.

14.3 Tabcorp Reimbursement Fee triggers

Subject to clauses 14.6, 14.7 and 14.9, Tabcorp must pay the Tabcorp Reimbursement Fee to Tatts, without set-off or withholding if:

- (a) Tatts is entitled to terminate this deed pursuant to clauses 15.1(a)(1), 15.1(c)(1) or 15.2(b) and has given the appropriate termination notice to Tabcorp;
- (b) Tabcorp materially breaches this deed and the Transaction does not complete; or
- (c) Tabcorp repudiates, terminates or purports to terminate this deed other than as expressly permitted by this deed.

14.4 Timing of payment of Reimbursement Fee

- (a) A demand by a party for payment of the Reimbursement Fee under clause 14.2 or clause 14.3 must:
 - (1) be in writing;
 - (2) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (3) state the circumstances which give rise to the demand; and
 - (4) nominate an account into which the other party is to pay the Reimbursement Fee.
- (b) Subject to clause 14.9, Tatts must pay the Tatts Reimbursement Fee into the account nominated by Tabcorp, and Tabcorp must pay the Tabcorp Reimbursement Fee into the account nominated by Tatts, without set-off or withholding, within 5 Business Days after receiving a demand for payment where (as the case requires) Tabcorp is entitled under clause 14.2 to the Tatts Reimbursement Fee or Tatts is entitled under clause 14.3 to the Tabcorp Reimbursement Fee.



14.5 Basis of Reimbursement Fee and Competition Approval Reimbursement Fee

The amount payable by Tatts (in respect of the Tatts Reimbursement Fee) pursuant to clause 14.2, and the amount payable by Tabcorp (in respect of the Tabcorp Reimbursement Fee and the Competition Approval Reimbursement Fee) pursuant to clauses 14.3 and 14.10 respectively, is purely and strictly compensatory in nature and has been calculated to reimburse Tabcorp (in respect of the Tatts Reimbursement Fee) and Tatts (in respect of the Tabcorp Reimbursement Fee and the Competition Approval Reimbursement Fee) for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction; and
- (d) out of pocket expenses incurred by Tabcorp or Tatts (as applicable) and Tabcorp's or Tatts' employees, advisers and agents in planning and implementing the Transaction,

and the parties agree that:

- (e) the costs actually incurred by Tabcorp and Tatts will be of such a nature that they cannot all be accurately ascertained;
- (f) the amount payable by Tatts (in respect of the Tatts Reimbursement Fee) and the amount payable by Tabcorp (in respect of the Tabcorp Reimbursement Fee and the Competition Approval Reimbursement Fee) is a genuine and reasonable pre-estimate of those costs; and
- (g) both parties have received advice from their respective legal advisers on the operation of this clause 14.

14.6 Compliance with law

- (a) This clause 14 does not impose an obligation on Tatts to pay the Tatts Reimbursement Fee, Tabcorp to pay the Tabcorp Reimbursement Fee or Tabcorp to pay the Competition Approval Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Tatts Reimbursement Fee, Tabcorp Reimbursement Fee or Competition Approval Reimbursement Fee (as applicable):
 - (1) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (2) is determined to be unenforceable or unlawful by a court,
 provided that, in either case, all lawful avenues of appeal and review, judicial and otherwise, have been exhausted.
- (b) The parties must not make or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 14.6(a).



14.7 Reimbursement Fee payable only once

- (a) Where the Tatts Reimbursement Fee becomes payable to Tabcorp under clause 14.2 and is actually paid to Tabcorp, Tabcorp cannot make any claim against Tatts for payment of any subsequent Tatts Reimbursement Fee.
- (b) Where the Tabcorp Reimbursement Fee becomes payable to Tatts under clause 14.3 and is actually paid to Tatts, Tatts cannot make any claim against Tabcorp for payment of any subsequent Tabcorp Reimbursement Fee.

14.8 Other Claims

This clause 14 does not limit the rights of any person in respect of any other Claims that may arise under this deed which relate to the event that gave rise to the right to make a demand under clause 14.4. However, any amount received by a person pursuing such other Claims must be offset and reduced by any amounts received by the relevant party pursuant to this clause 14.

14.9 No Reimbursement Fee or Competition Approval Reimbursement Fee if Scheme Effective

Despite anything to the contrary in this deed, the Tatts Reimbursement Fee, the Tabcorp Reimbursement Fee nor the Competition Approval Reimbursement Fee will be payable prior to the termination of this deed or if the Scheme becomes Effective, notwithstanding the occurrence of any event in clauses 14.2, 14.3 or 14.10.

14.10 Competition Approval Reimbursement Fee

- (a) Subject to clauses 14.6, 14.9 and 14.10(b), Tabcorp must pay the Competition Approval Reimbursement Fee to Tatts, without set-off or withholding, into the account nominated by Tatts within 5 Business Days after receiving a demand for payment if:
 - (1) this deed is terminated under clause 3.4(f); or
 - (2) the Condition Precedent in clause 3.1(a)(1) (**Competition Approval Condition**) is not satisfied (or waived) by the End Date,
 provided that:
 - (3) Tatts has complied with its obligations under this deed;
 - (4) Tatts has used its best endeavours to procure that the Competition Approval Condition is satisfied.
- (b) If for any reason Tatts is entitled to payment of the Reimbursement Fee from Tabcorp as well as the Competition Approval Reimbursement Fee under this deed, then Tatts will only be entitled to retain the higher of the two fees.

15 Termination

15.1 Termination for material breach

- (a) Either party may terminate this deed by written notice to the other party:



- (1) other than in respect of a breach of either a Tabcorp Representation and Warranty or a Tatts Representation and Warranty (which are dealt with in clause 15.2), at any time before 8.00am on the Second Court Date if the other party has materially breached this deed, the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given;
 - (2) at any time before 8.00am on the Second Court Date if the Court (or another court of competent jurisdiction in Australia) or another Government Agency (other than the Australian Competition Tribunal) in Australia has taken any action permanently restraining or otherwise prohibiting or preventing the Transaction, or has refused to do anything necessary to permit the Transaction from being implemented by the End Date, and the action or refusal has become final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of an appeal or review succeeding by the End Date;
 - (3) in the circumstances set out in, and in accordance with, clause 3.4; or
 - (4) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.
- (b) Tabcorp may terminate this deed by written notice to Tatts until 8.00am on the Second Court Date if:
- (1) a Material Adverse Change or a Prescribed Occurrence occurs, is announced or is otherwise discovered by Tabcorp (whether or not it becomes public) in relation to Tatts, Tabcorp has given written notice to Tatts setting out the relevant circumstances and stating an intention to terminate this deed, and Tatts has failed to remedy the Material Adverse Change or Prescribed Occurrence to Tabcorp's reasonable satisfaction within 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given; or
 - (2) a majority of the members of the Tatts Board fails to recommend the Scheme or a majority of the members of the Tatts Board withdraw, adversely revise or adversely modify their recommendation that Tatts Shareholders vote in favour of the Scheme, or a majority of the members of the Tatts Board make a public statement indicating that they no longer recommend the Transaction or recommending, supporting or endorsing another transaction (including any Competing Proposal but excluding a statement that no action should be taken by Tatts Shareholders pending the assessment of a Competing Proposal by the Tatts Board).
- (c) Tatts may terminate this deed by written notice to Tabcorp at any time before 8.00am on the Second Court Date if:
- (1) a Material Adverse Change or a Prescribed Occurrence occurs, is announced or is otherwise discovered by Tatts (whether or not it becomes public) in relation to Tabcorp, Tatts has given written notice to Tabcorp setting out the relevant circumstances and stating an intention to terminate this deed, and Tabcorp has failed to remedy the Material Adverse Change or Prescribed Occurrence to Tatts'



reasonable satisfaction within 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given; or

- (2) as permitted by clause 5.4, a majority of the members of the Tatts Board fail to recommend or withdraw, adversely revise or adversely qualify (except for customary qualifications) their recommendation that Tatts Shareholders vote in favour of the Scheme, or the Tatts Board recommends any Competing Proposal.

15.2 Termination for breach of representations and warranties

- (a) Tabcorp may, at any time prior to 8.00am on the Second Court Date, terminate this deed for breach of a Tatts Representation and Warranty only if:
 - (1) Tabcorp has given written notice to Tatts setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse; and
 - (2) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(a)(1).
- (b) Tatts may, at any time before 8.00am on the Second Court Date, terminate this deed for breach of a Tabcorp Representation and Warranty only if:
 - (1) Tatts has given written notice to Tabcorp setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse; and
 - (2) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(b)(1).

15.3 Effect of termination

If this deed is terminated by either party under clauses 3.4, 15.1 or 15.2:

- (a) each party will be released from its obligations under this deed, except that this clause 15.3, and clauses 1, 9.7, 9.8, 9.9, 12, 14, 16, 17, 18 and 19, will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Scheme.

15.4 Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed and the provision under which it is terminating the Deed.



15.5 No other termination

Neither party may terminate or rescind this deed except as permitted under clauses 3.4, 15.1 or 15.2.

16 Duty, costs and expenses

16.1 Stamp duty

Tabcorp:

- (a) must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme; and
- (b) indemnifies Tatts against any liability arising from its failure to comply with clause 16.1(a).

16.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

17 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 17(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 17(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 17(b):
 - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the



amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.

- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

18 Notices

18.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to that party as nominated below (or any alternative details nominated to the sending party by Notice):

Party	Address	Addressee	Email
Tatts	87 Ipswich Road, Woolloongabba, QLD 4102	Ms Anne Tucker, General Counsel and Company Secretary	anne.tucker@tattsgroup.com
	Copy to Clayton Utz, Level 18, 333 Collins Street, Melbourne VIC 3000	Andrew Walker, Partner	awalker@claytonutz.com



Party	Address	Addressee	Email
Tabcorp	5 Bowen Crescent, Melbourne, VIC 3004	Ms Fiona Mead, Company Secretary	Fiona.Mead@tabcorp.com.au
	Copy to Herbert Smith Freehills Level 42, 101 Collins Street, Melbourne VIC 3000	Rodd Levy, Partner Courtney Dixon, Senior Associate	Rodd.Levy@hsf.com Courtney.Dixon@hsf.com

18.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By email to the nominated email address	When the party sending the email receives notification that the email was successfully transmitted and read by the receiving party, or if no such notification is received, 24 hours after the email was sent, unless the party sending the email receives notification that the email was not successfully transmitted.

19 General

19.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.



19.2 Service of process

Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 18.

19.3 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

19.4 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 19.4(a) does not apply where enforcement of the provision of this deed in accordance with clause 19.4(a) would materially affect the nature or effect of the parties' obligations under this deed.

19.5 Waiver

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 19.5 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this deed and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

19.6 Variation

A variation of any term of this deed must be in writing and signed by the parties.

19.7 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.



- (b) A breach of clause 19.7(a) by a party shall be deemed to be a material breach for the purposes of clause 15.1(a)(1).
- (c) Clause 19.7(b) does not affect the construction of any other part of this deed.

19.8 Acknowledgement

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of clause 13 and that either party is entitled to seek and obtain without limitation injunctive relief if the other party breaches or threatens to breach clause 13.

19.9 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

19.10 Entire agreement

This deed, together with the Confidentiality Agreement and all other documents referred to herein or initialled by or on behalf of the parties on or about the date hereof, states all the express terms agreed by the parties in respect of its subject matter. These supersede all prior discussions, negotiations, understandings and agreements in respect of its subject matter (other than the Confidentiality Agreement).

19.11 Counterparts

This deed may be executed in any number of counterparts.

19.12 Relationship of the parties

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

19.13 Remedies cumulative

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

19.14 Exercise of rights

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.



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Schedules

Table of contents

Tabcorp Representations and Warranties	57
Tatts Representations and Warranties	59
Tabcorp details	61
Tatts details	62



Schedule 1

Tabcorp Representations and Warranties

Tabcorp represents and warrants to Tatts (in its own right and separately as trustee or nominee for each of the other Tatts Indemnified Parties) that:

- (a) **Tabcorp Information:** the Tabcorp Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Tatts Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Tabcorp Information:** the Tabcorp Information:
 - (1) will be provided to Tatts in good faith and on the understanding that Tatts and each other Tatts Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by Tabcorp to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation, provide to Tatts all further or new information which arises after the Scheme Booklet has been despatched to Tatts Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Tabcorp Information is not misleading or deceptive (including by way of omission);
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Tabcorp;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **no default:** this deed does not conflict with or result in the breach of or a default under:
 - (1) any provision of Tabcorp's Constitution; or
 - (2) any material term or provision of any Material Contract (including any material financing arrangements) or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Tabcorp Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (h) **deed binding:** this deed is a valid and binding obligation of Tabcorp, enforceable in accordance with its terms;



- (i) **continuous disclosure:** Tabcorp has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **capital structure:** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 3 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Tabcorp Shares other than as set out in Schedule 3 and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Tabcorp Shares, options, warrants, performance rights or other securities or instruments in Tabcorp;
- (k) **interest:** any company, partnership, trust, joint venture or other enterprise in which Tabcorp or another Tabcorp Group Member owns or has a material interest in is as notified in writing by Tabcorp to Tatts prior to entry into this deed;
- (l) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Tabcorp Group Member, nor has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (m) **compliance:** each member of the Tabcorp Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Tabcorp Group as presently being conducted;
- (n) **Tabcorp Disclosure Materials:** it has collated and prepared all of the Tabcorp Disclosure Materials in good faith for the purposes of a due diligence process (but which process does not include due diligence on information of commercial or competitive sensitivity) and in this context, as far as Tabcorp is aware, the Tabcorp Disclosure Materials contain all material information within the categories referred to in the due diligence request list initialled by the parties' lawyers for the purposes of identification on or about the date of this deed;
- (o) **all information:** subject to the Protocols and so far as it is aware, Tabcorp has disclosed all material information (or the substance of such material information) relating to the Tabcorp Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this deed, that is objectively necessary for Tatts to make an informed assessment of:
 - (1) Tabcorp's Material Contracts and their respective change of control or termination provisions which would be enlivened by implementation of the Transaction;
 - (2) Tabcorp's material licencing arrangements;
 - (3) Tabcorp's material financing arrangements; and
 - (4) material disputes between Tabcorp and a Government Authority; and
- (p) **not misleading:** all information it has provided to the Independent Expert, pursuant to clause 5.2(q) or otherwise, or to Tatts is accurate and not misleading and it has not omitted any information which it is aware would be required to make the information provided to the Independent Expert or Tatts not misleading.



Schedule 2

Tatts Representations and Warranties

Tatts represents and warrants to Tabcorp (in its own right and separately as trustee or nominee for each of the other Tabcorp Indemnified Parties) that:

- (a) **Tatts Information:** the Tatts Information contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Tatts Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Tatts Information:** the Tatts Information:
 - (1) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Tabcorp and each other Tabcorp Indemnified Party will rely on that information; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by Tatts to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (c) **new information:** it will, as a continuing obligation (but in respect of the Tabcorp Information, only to the extent that Tabcorp provides Tatts with updates to the Tabcorp Information), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been despatched to Tatts Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive (including by way of omission);
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Tatts;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **no default:** this deed does not conflict with or result in the breach of or a default under:
 - (1) any provision of Tatts constitution;
 - (2) any material term or provision of any Material Contract (including any material financing arrangements) or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Tatts Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (h) **deed binding:** this deed is a valid and binding obligation of Tatts, enforceable in accordance with its terms;



- (i) **continuous disclosure:** Tatts has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **capital structure:** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 4 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Tatts Shares other than as set out in Schedule 4 and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Tatts Shares, options, warrants, performance rights or other securities or instruments in Tatts;
- (k) **interest:** any company, partnership, trust, joint venture or other enterprise in which Tatts or another Tatts Group Member owns or has a material interest in is as notified in writing by Tatts to Tabcorp prior to entry into this deed;
- (l) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Tatts Group Member, nor has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (m) **compliance:** each member of the Tatts Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Tatts Group as presently being conducted;
- (n) **Tatts Disclosure Materials:** it has collated and prepared all of the Tatts Disclosure Materials in good faith for the purposes of a due diligence process (but which process does not include due diligence on information of commercial or competitive sensitivity) and in this context, as far as Tatts is aware, the Tatts Disclosure Materials contain all material information within the categories referred to in the due diligence request list initialled by the parties' lawyers for the purposes of identification on or about the date of this deed;
- (o) **all information:** subject to the Protocols and so far as it is aware, Tatts has disclosed all material information (or the substance of such material information) relating to the Tatts Group or its respective businesses or operations as at the date of this deed, that would be objectively necessary for Tabcorp to make an informed assessment of:
 - (1) Tatts' Material Contracts and their respective change of control or termination provisions which would be enlivened by implementation of the Transaction;
 - (2) Tatts' material licencing arrangements;
 - (3) Tatts' material financing arrangements; and
 - (4) material disputes between Tatts and a Government Authority; and
- (p) **not misleading:** all information it has provided to the Independent Expert, pursuant to clause 5.2(q) or otherwise, or to Tabcorp is accurate and not misleading and it has not omitted any information which it is aware would be required to make the information provided to the Independent Expert or Tabcorp not misleading.



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Schedule 3

Tabcorp details

Security	Total number on issue
Tabcorp Shares	835,267,041
Tabcorp Performance Rights	2,554,854 Performance Rights which are capable of being converted into 2,554,854 Tabcorp Shares.
Subordinated Notes	2,500,000



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Schedule 4

Tatts details

Security	Total number on issue
Tatts Shares	1,468,016,192
Restricted Shares	1,562,647
Performance Rights	653,289 FY 2016 Performance Rights; and 227,155 FY 2017 Performance Rights, which are in aggregate capable of being converted into 880,444 Tatts Shares.
Senior and unsecured debt securities	1,946,642




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Signing page

Executed as a deed

Signed sealed and delivered by
Tabcorp Holdings Limited
by

sign here ▶



Company Secretary/Director

print name

JANE DWYER

sign here ▶



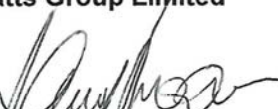
Director

print name

DAVID ATTENBOROUGH

Signed sealed and delivered by
Tatts Group Limited
by

sign here ▶



Company Secretary/Director

print name

HARRY BEAN

sign here ▶



Director

print name

Robert Michael Sean Cooke



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Attachment 1

Scheme of arrangement

Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Tatts Group Limited
Tatts

The registered holders of fully paid ordinary shares in the capital of Tatts as
at the Record Date

Clayton Utz
Lawyers
Level 18 333 Collins Street
Melbourne VIC 3000
GPO Box 9806 Melbourne VIC 3001
Tel +61 3 9286 6000
Fax +61 3 9629 8488
www.claytonutz.com

Contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation.....	3
1.3	Business Day.....	4
2.	Conditions Precedent	4
2.1	Conditions to the Scheme	4
2.2	Certificates in relation to Conditions Precedent	5
2.3	Termination of Implementation Deed	5
3.	Scheme	5
3.1	Effective Date of the Scheme	5
3.2	Lapse of Scheme	5
4.	Implementation of Scheme	5
4.1	Lodgement.....	5
4.2	Transfer of Scheme Shares.....	6
4.3	Provision of Scheme Consideration	6
4.4	Joint holders	7
4.5	Unclaimed monies	8
4.6	Fractional entitlements and share splitting or division	8
4.7	Binding instruction or notifications	9
4.8	Orders of a Court of Government Agency.....	9
4.9	Ineligible Foreign Shareholders	9
4.10	Status of New Tabcorp Shares.....	11
5.	Dealings in Tatts Shares	11
5.1	Dealings in Tatts Shares by Scheme Shareholders.....	11
5.2	Tatts Share Register.....	11
5.3	Information to be made available to Tabcorp	12
5.4	Effect of share certificates and holding statements	12
5.5	No disposals after Record Date.....	12
6.	Suspension and termination of quotation.....	12
7.	General Scheme provisions.....	12
7.1	Appointment of agent and attorney	12
7.2	Enforcement of Deed Poll.....	12
7.3	Scheme Shareholders' consent.....	13
7.4	Scheme Shareholder's agreements	13
7.5	Warranty by Scheme Shareholders.....	13
7.6	Title to Scheme Shares and transfer free from encumbrance	13
7.7	Appointment of sole proxy	14
7.8	Alterations and Conditions.....	14
7.9	Notices	14
7.10	Inconsistencies	14
7.11	Further assurance.....	14
7.12	Stamp Duty	15
7.13	Governing Law.....	15

Scheme of Arrangement made under section 411 of the Corporations Act 2001 (Cth)

Date

Parties **Tatts Group Limited ABN 19 108 686 040** of 87 Ipswich Road, Woolloongabba QLD 4102 (**Tatts**)

The registered holders of fully paid ordinary shares in the capital of Tatts as at the Record Date.

Background

- A. Tatts is a public company incorporated in the state of Victoria and is admitted to the official list of ASX.
- B. Tabcorp Holdings Limited ABN 66 063 780 709 (**Tabcorp**) is a public company incorporated in the state of Victoria and is admitted to the official list of ASX.
- C. Tatts and Tabcorp have entered into the Implementation Deed pursuant to which, amongst other things, Tatts has agreed to propose this Scheme to Tatts Shareholders, and each of Tatts and Tabcorp have agreed to take certain steps to give effect to the Scheme.
- D. If the Scheme becomes Effective, then:
 - (a) all the Scheme Shares and all rights and entitlements attaching to them as at the Implementation Date will be transferred to Tabcorp and the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the provisions of the Scheme and the Deed Poll; and
 - (b) Tatts will enter the name and address of Tabcorp in the Tatts Share Register as the holder of the Scheme Shares.
- E. Tabcorp has entered into the Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to perform the obligations contemplated of it under the Scheme.

1. Definitions and interpretation

1.1 Definitions

In this document, unless the contrary intention appears or the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.

Business Day means a day which is a "Business Day" within the meaning given in the Listing Rules.

Cash Consideration means A\$0.425 cash (subject to adjustment in accordance with clause 6.3 of the Implementation Deed), for each Tatts Share held by a Scheme Shareholder.

CHES means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlements Pty Limited ABN 49 008 504 532.

Condition means each condition to this Scheme set out in clause 2.1.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Tabcorp and Tatts.

Deed Poll means the deed poll dated [insert] executed by Tabcorp in favour of the Scheme Shareholders (subject to any amendments permitted by its terms).

Effective means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

Effective Date means the date on which the Scheme becomes Effective.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date has the meaning given in the Implementation Deed.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.

Implementation Date means the fifth Business Day after the Record Date or such other date after the Record Date as the parties agree in writing.

Implementation Deed means the merger implementation deed dated 18 October 2016 between Tatts and Tabcorp under which, amongst other things, Tatts has agreed to propose the Scheme to Scheme Shareholders, and each of Tabcorp and Tatts has agreed to take certain steps to give effect to the Scheme.

Ineligible Foreign Shareholder means a Scheme Shareholder whose address shown in the Tatts Share Register on the Record Date is a place outside Australia and its external territories or New Zealand, unless Tabcorp (acting reasonably, and after consultation with Tatts) determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with New Tabcorp Shares when the Scheme becomes Effective.

Listing Rules means the official listing rules of ASX.

New Tabcorp Share means a fully paid ordinary share in Tabcorp to be issued to Scheme Shareholders under the Scheme.

Record Date means 5.00pm on the fifth Business Day after the Effective Date or such other time and date as the parties agree in writing.

Registered Address means, in relation to a Tatts Shareholder, the address shown in the Tatts Share Register as at the Record Date.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Tatts and the Scheme Shareholders as set out in this document, subject to any alterations or

conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to in writing by Tabcorp and Tatts (each acting reasonably).

Scheme Consideration means the consideration to be provided by Tabcorp to each Scheme Shareholder for the transfer to Tabcorp of each Scheme Share, being for each Tatts Share held by a Scheme Shareholder as at the Record Date:

- (a) the Cash Consideration; and
- (b) the Scrip Consideration,

subject to the terms of this Scheme.

Scheme Meeting means the meeting of Tatts Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme, and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Shareholder means a Tatts Shareholder as at the Record Date.

Scheme Shares means all Tatts Shares held by the Scheme Shareholders as at the Record Date.

Scrip Consideration means an allotment of 0.80 New Tabcorp Shares for each Tatts Share held by a Scheme Shareholder.

Second Court Date means the first day on which an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Tabcorp Share means a fully paid ordinary share in the capital of Tabcorp.

Tabcorp Share Register means the register of members of Tabcorp maintained in accordance with the Corporations Act.

Tatts Board means the board of directors of Tatts.

Tatts Share means a fully paid ordinary share in the capital of Tatts.

Tatts Share Register means the register of members of Tatts maintained by the Tatts Share Registry in accordance with the Corporations Act.

Tatts Share Registry means Computershare Investor Services Pty Limited ABN 48 078 279 277 of 117 Victoria Street, West End, QLD, Australia 4101.

Tatts Shareholder means a person who is registered in the Tatts Share Register as a holder of a Tatts Share.

Trading Day has the meaning given in the Listing Rules.

1.2 Interpretation

In this document, unless the contrary intention appears or the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes each other gender;

- (c) references to persons includes references to individuals, corporations, other bodies corporate or bodies politic;
- (d) references to paragraphs or clauses are to a paragraph or clause of this document;
- (e) a reference to a statute, regulation or agreement is to such a statute, regulation or agreement as from time to time amended;
- (f) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (g) if a time period is specified and dates from a given date or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) a reference to any time, unless otherwise stated, is a reference to that time in Melbourne, Australia;
- (j) a reference to "\$" or "A\$" is to the lawful currency of the Commonwealth of Australia;
- (k) a reference to a document is that document as varied, novated, ratified or replaced from time to time;
- (l) the interpretation of a substantive provision is not affected by any heading; and
- (m) "includes" in any form is not a word of limitation.

1.3 Business Day

Except where otherwise expressly provided, where under this document the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

2. Conditions Precedent

2.1 Conditions to the Scheme

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions, and the provisions of clauses 3 and 4 will not come into effect unless and until each of these conditions have been satisfied:

- (a) by 8.00am on the Second Court Date, each of the conditions set out in clause 3.1 of the Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(c) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at 8.00 am on the Second Court Date neither the Implementation Deed nor the Deed Poll has been terminated;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act with or without modification acceptable to Tabcorp and Tatts (each acting reasonably);

- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to Tabcorp and Tatts (each acting reasonably) have been satisfied or been waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to the Scheme on or before the End Date.

2.2 Certificates in relation to Conditions Precedent

On the Second Court Date:

- (a) Tatts must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clause 3.1 (other than clause 3.1(c)) of the Implementation Deed have been satisfied or waived in accordance with the Implementation Deed; and
- (b) Tabcorp must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clause 3.1 (other than clause 3.1(c)) of the Implementation Deed have been satisfied or waived in accordance with the Implementation Deed.

2.3 Termination of Implementation Deed

Without limiting any rights under the Implementation Deed or the Deed Poll, in the event that the Implementation Deed is terminated in accordance with its terms at or before 8.00 am on the Second Court Date, Tatts is released from any further obligation to take steps to implement the Scheme.

3. Scheme

3.1 Effective Date of the Scheme

Subject to clause 3.2, the Scheme will take effect on and from the Effective Date.

3.2 Lapse of Scheme

The Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date has not occurred on or before the End Date; or
- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms prior to 8.00am on the Second Court Date.

4. Implementation of Scheme

4.1 Lodgement

If the Conditions are satisfied, Tatts must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving the Scheme as soon as possible after, and in any event by no later than 5.00 pm on the Business Day following, the date on which the Court approves the Scheme.

4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clauses 4.3 and 4.4 and to Tabcorp having provided Tatts with such evidence thereof as it may reasonably require, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, be transferred to Tabcorp without the need for any further act by any Scheme Shareholder (other than acts performed by Tatts or its directors as attorney or agent for Scheme Shareholders under this Scheme) by Tatts effecting a valid transfer or transfers of the Scheme Shares to Tabcorp under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:
 - (i) Tatts delivering to Tabcorp a completed share transfer form or forms (which may be a master transfer form) to transfer all of the Scheme Shares to Tabcorp duly executed by Tatts as the attorney and agent of each Scheme Shareholder under clause 7.1 of this Scheme;
 - (ii) Tabcorp executing and delivering the share transfer form or forms to Tatts; and
 - (iii) Tatts immediately after receipt of the share transfer form or forms under clause 4.2(a)(ii), entering, or procuring the entry of, the name and address of Tabcorp in the Tatts Share Register as the holder of all of the Scheme Shares; and
- (b) Tabcorp will issue and allot to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by the Scheme Shareholder, in accordance with and subject to the terms of the Scheme.

4.3 Provision of Scheme Consideration

Tabcorp's obligations under clause 4.2(b) will be satisfied as follows:

- (a) subject to clauses 4.4, 4.6 and 4.8, in respect of the Cash Consideration Tabcorp must:
 - (i) by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the Cash Consideration payable to each Scheme Shareholder, in an Australian dollar denominated trust account operated by Tatts as trustee for the Scheme Shareholders, (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Tabcorp's account);
 - (ii) on the Implementation Date, subject to funds having been deposited in accordance with clause 4.3(a)(i), Tatts must pay or procure the payment of the Cash Consideration from the trust account referred to in clause 4.3(a)(i) to each Scheme Shareholder based on the number of Tatts Shares held by such Scheme Shareholder as set out in the Tatts Share Register on the Record Date:
 - A. where a Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Tatts Share Registry to receive dividend payments from Tatts by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or

- B. otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 4.3(a)(ii)A, dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.4); and
- (iii) to the extent that, following satisfaction of Tatts' obligations under this clauses 4.3(a)(ii)A and 4.3(a)(ii)B, there is a surplus in the amount held by Tatts as trustee for the Scheme Shareholders in the trust account referred to in clause 4.3(a)(i), that surplus must be paid by Tatts to Tabcorp; and
- (b) subject to clauses 4.4, 4.6, 4.8 and 4.9, in respect of the Scrip Consideration, on the Implementation Date Tabcorp must:
 - (i) issue to each Scheme Shareholder (other than an Ineligible Foreign Shareholder) such number of New Tabcorp Shares as that Scheme Shareholder is entitled to as Scheme Consideration;
 - (ii) issue to a nominee appointed by Tabcorp in accordance with clause 4.9 such number of New Tabcorp Shares as are attributable to the Ineligible Foreign Shareholders;
 - (iii) procure the entry in the Tabcorp Share Register:
 - A. of the name and address of each Scheme Shareholder in respect of the New Tabcorp Shares issued to them; and
 - B. of the name and address of the nominee appointed by Tabcorp in respect of those New Tabcorp Shares that would otherwise be issued to each Scheme Shareholder who is an Ineligible Foreign Shareholder; and
 - (iv) within 5 Business Days after the Implementation Date, send or procure the despatch to each Scheme Shareholder whose New Tabcorp Shares are held on the issuer sponsored subregister of Tabcorp, or the nominee appointed by Tabcorp (as the case may be) by prepaid post to their address (as recorded in the Tatts Share Register as at the Record Date, except in the case of the nominee appointed by Tabcorp) of uncertificated holding statements for the New Tabcorp Shares issued to the Scheme Shareholder or the nominee appointed by Tabcorp (as the case may be) in accordance with this Scheme.
- (c) This clause 4.3 does not apply to a Scheme Shareholder who does not have a Registered Address or where Tatts and Tabcorp believe that such Scheme Shareholder (other than Foreign Overseas Shareholders) is not known at their Registered Address.

4.4 Joint holders

In the case of Scheme Shares held in joint names:

- (d) any cheque required to be paid to Scheme Shareholders will be made payable to the joint holders; and
- (e) the holding statements for New Tabcorp Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders,

and will be forwarded to the holder whose name appears first in the Tatts Share Register as at 5:00pm on the Record Date.

4.5 Unclaimed monies

- (a) Tatts may cancel a cheque issued under this clause 4 if the cheque:
 - (i) is returned to Tatts; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was presented.
- (b) During the period of twelve months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Tatts (or the Tatts Share Registry), Tatts must reissue a cheque that was previously cancelled under this clause 4.5.
- (c) The *Unclaimed Money Act* 2008 (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act* 2008 (Vic)).

4.6 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration:
 - (i) comprising New Tabcorp Shares is such that a fractional entitlement to a New Tabcorp Share arises; or
 - (ii) comprising cash is such that a fractional entitlement to a cent arises,

then the entitlement of that Scheme Shareholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of New Tabcorp Shares (or cents, as applicable), and any such fractional entitlement of 0.5 or more will be rounded up to the nearest whole number of New Tabcorp Shares (or cents, as applicable).
- (b) If Tabcorp and Tatts are each of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 4.6(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Tabcorp may direct Tatts to give notice to those Scheme Shareholders:
 - (i) setting out their names and registered addresses as shown in the Tatts Share Register;
 - (ii) stating that opinion; and
 - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares. By complying with the other provisions of the Scheme in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme

Shares, Tabcorp will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

4.7 Binding instruction or notifications

Except for a Scheme Shareholder's tax file number, any binding instruction or notification between a Scheme Shareholder and Tatts relating to Scheme Shares as at the Record Date (including, without limitation, any instructions relating to payment of dividends or to communications from Tatts) will, from the Record Date, be deemed (except to the extent determined otherwise by Tabcorp) to be a similarly binding instruction or notification to, and accepted by Tabcorp, in respect of the New Tabcorp Shares issued to the Scheme Shareholder until that instruction or notification is revoked or amended in writing addressed to Tabcorp at the Tabcorp Share Registry, provided that any such instructions or notifications accepted by Tabcorp will apply to and in respect of the issue of New Tabcorp Shares as part of the Scheme Consideration only to the extent that they are not inconsistent with the other provisions of this Scheme.

4.8 Orders of a Court of Government Agency

If written notice is given to Tatts (or the Tatts Share Registry) of an order or direction made by a Court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Tatts in accordance with this clause 4, then Tatts shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents Tatts from providing consideration to any particular Scheme Shareholder in accordance with this clause 4, or issuance of such consideration is otherwise prohibited by applicable law, Tatts shall be entitled to (as applicable):
 - (i) retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Cash Consideration; and
 - (ii) direct Tabcorp not to issue, or to issue to a trustee or nominee, such number of New Tabcorp Shares as that Scheme Shareholder would otherwise be entitled to under clause 4.3,

until such time as provision of the Scheme Consideration in accordance with this clause 4.8 is permitted by that (or another) order or direction or otherwise by law.

4.9 Ineligible Foreign Shareholders

- (a) Tabcorp will be under no obligation to issue any New Tabcorp Shares under this Scheme to any Ineligible Foreign Shareholder and instead, subject to clauses 4.6 and 4.8, Tabcorp will ensure that New Tabcorp Shares to which an Ineligible Foreign Shareholder would otherwise have been entitled (if they were a Scheme Shareholder) will be issued to a nominee appointed by Tabcorp.
- (b) Tabcorp will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
 - (i) sells or procures the sale on the financial market conducted by ASX of all of the New Tabcorp Shares issued to the nominee pursuant to clause 4.9(a) in such manner, at such price and on such other terms as the nominee reasonably determines; and

- (ii) remits to Tabcorp the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- (b) Promptly after the last sale of New Tabcorp Shares in accordance with clause 4.9(b), Tabcorp will pay to each Ineligible Foreign Shareholder the proportion of the net proceeds of sale received by Tabcorp pursuant to clause 4.9(b)(ii) to which that Ineligible Foreign Shareholder is entitled.
- (c) Neither Tabcorp nor Tatts gives any assurance as to the price that will be achieved for the sale of New Tabcorp Shares described in clause 4.9(b)(ii). The sale of the New Tabcorp Shares under this clause 4.9 will be at the risk of the Ineligible Foreign Shareholder.
- (d) Tabcorp must appoint the nominee at least 10 Business Days prior to the Scheme Meeting.
- (e) Tabcorp must make payments to Ineligible Foreign Shareholders under clause 4.9(b) by either (in the absolute discretion of Tatts):
 - (i) where an Ineligible Foreign Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Tatts Share Registry to receive dividend payments by Tatts by electronic funds transfer to a bank account nominated by the Ineligible Foreign Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) otherwise, whether or not the Ineligible Foreign Shareholder has made an election referred to in clause 4.9(e)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Ineligible Foreign Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Ineligible Foreign Shareholder (or in the case of joint holders, in accordance with the procedures in clause 4.4).
- (f) If Tatts receives professional advice that any withholding or other tax is required by law to be withheld from a payment to an Ineligible Foreign Shareholder, Tatts is entitled to withhold the relevant amount before making the payment to the Ineligible Foreign Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme, including clause 4.9(b)(ii). Tatts must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Ineligible Foreign Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Foreign Shareholder.
- (g) Each Ineligible Foreign Shareholder appoints Tatts as its agent to receive on its behalf any financial services guide (or similar or equivalent document) or other notices (including any updates of those documents) that the nominee is required to provide to Ineligible Foreign Shareholders under the Corporations Act or any other applicable law.
- (h) Payment of the amount calculated under 4.9(b)(ii) to an Ineligible Foreign Shareholder in accordance with this clause 4.9 satisfies in full the Ineligible Foreign Shareholder's right to the Scrip Consideration.
- (i) Where the issue of New Tabcorp Shares to which a Scheme Shareholder would otherwise be entitled under this Scheme would result in a breach of law or of a provision of the constitution of Tabcorp:

- (i) Tabcorp will issue the maximum possible number of New Tabcorp Shares to the Scheme Shareholder without giving rise to such a breach; and
- (ii) to the maximum extent permitted by law, any further New Tabcorp Shares to which that Scheme Shareholder is entitled, but the issue of which to the Scheme Shareholder would give rise to such a breach, will instead be issued to the nominee and dealt with under the preceding provisions in this clause 4.9, as if a reference to an Ineligible Foreign Shareholder also included that Scheme Shareholder and references to that person's New Tabcorp Shares in that clause were limited to the New Tabcorp Shares issued to the nominee under this clause.

4.10 Status of New Tabcorp Shares

Tabcorp covenants in favour of Tatts (in its own right and on behalf of each Scheme Shareholder) that:

- (a) the New Tabcorp Shares issued as Scrip Consideration will, on their issue, rank equally in all respects with all other Tabcorp Shares on issue at the Effective Date;
- (b) it will use all reasonable endeavours to ensure that the New Tabcorp Shares issued as Scrip Consideration will be listed for quotation on the official list of the ASX with effect from the Business Day after the Effective Date (or such later date as ASX may require), initially on a deferred settlement basis and, with effect from the Business Day following the Implementation Date, on an ordinary (T+2) settlement basis; and
- (c) on issue, each New Tabcorp Share will be duly and validly issued in accordance with all applicable laws and Tabcorp's constitution, fully paid and, to the extent within the control of Tabcorp, free from any Encumbrance.

5. Dealings in Tatts Shares

5.1 Dealings in Tatts Shares by Scheme Shareholders

For the purposes of establishing the identity of Scheme Shareholders, dealings in Tatts Shares will only be recognised by Tatts if:

- (a) in the case of dealings of the type to be effected on CHESSE, the transferee is registered in the Tatts Share Register as the holder of the relevant Tatts Shares on or before the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the place where the Tatts Share Register is kept by 4:00 pm on the day which is the Record Date (in which case Tatts must register such transfers before 7:00 pm on that day),

and Tatts will not accept for registration, or recognise for the purpose of establishing who are Scheme Shareholders, any transmission application or transfer in respect of Tatts Shares received after such times on the Record Date.

5.2 Tatts Share Register

For the purposes of determining entitlements to the Scheme Consideration, Tatts will until the Scheme Consideration has been paid and Tabcorp has been entered in the Tatts Share Register as the holder of all of the Scheme Shares, maintain the Tatts Share Register in accordance with the provisions of this clause 5, and the Tatts Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

5.3 Information to be made available to Tabcorp

Tatts must procure that, as soon as practicable following the Record Date and in any event by 5:00pm on the first Business Day after the Record Date, details of the names, registered addresses and holdings of Tatts Shares of every Scheme Shareholder shown in the Tatts Share Register at the Record Date are made available to Tabcorp in such form as Tabcorp may reasonably require.

5.4 Effect of share certificates and holding statements

As from the Record Date (and other than for Tabcorp, following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title in respect of those Scheme Shares and, as from that date, each entry on the Tatts Share Register at that date (other than entries in respect of Tabcorp) will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

5.5 No disposals after Record Date

If the Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date, and any attempt to do so will have no effect and Tatts shall be entitled to disregard any such disposal.

6. Suspension and termination of quotation

- (a) Tatts must apply to ASX for suspension of trading of the Tatts Shares on ASX with effect from the close of trading on the Effective Date.
- (b) Tatts must apply to ASX for termination of official quotation of the Tatts Shares on ASX and the removal of Tatts from the official list of ASX with effect from the Business Day immediately following the Implementation Date.

7. General Scheme provisions

7.1 Appointment of agent and attorney

Each Scheme Shareholder, without the need for any further act:

- (a) on the Implementation Date, irrevocably appoints Tatts and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney for the purpose of executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the share transfer(s) to be delivered under clause 4.2 and the giving of the Scheme Shareholders' consent under clause 7.3; and
- (b) on the Effective Date, irrevocably appoints Tatts and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney for the purpose of enforcing the Deed Poll against Tabcorp,

and Tatts accepts such appointment. Tatts, as agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 7.1 to all or any of its directors, officers or secretaries (jointly, severally or jointly and severally).

7.2 Enforcement of Deed Poll

Tatts undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Tabcorp (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

7.3 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably:

- (a) consents to Tatts and Tabcorp doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or desirable to the implementation and performance of the Scheme; and
- (b) acknowledges that the Scheme binds Tatts and all of the Tatts Shareholders from time to time (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the resolution to approve this Scheme).

7.4 Scheme Shareholder's agreements

Under the Scheme:

- (a) each Scheme Shareholder to whom New Tabcorp Shares are to be issued in accordance with this Scheme:
 - (i) agrees to become a member of Tabcorp and to have their name entered in the Tabcorp Share Register; and
 - (ii) accepts the New Tabcorp Shares issued under this Scheme on the terms and conditions of the constitution of Tabcorp and agrees to be bound by the constitution of Tabcorp as in force from time to time, without the need for any further act by a Scheme Shareholder;
- (b) each Scheme Shareholder agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Tabcorp in accordance with the terms of this Scheme; and
- (c) agrees to the variation, cancellation or modification (if any) of the rights attached to their Scheme Shares constituted by or resulting from this Scheme.

7.5 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Tabcorp and, to the extent enforceable, appointed and authorised Tatts as its agent to warrant to Tabcorp, that:

- (a) all of its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Tabcorp under this Scheme, be fully paid and free from all Encumbrances and security interests (within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)), and from any interests of third parties or any restrictions on transfer of any kind (whether legal or otherwise), and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to Tabcorp under this Scheme. Tatts undertakes that it will provide such warranty to Tabcorp as agent and attorney of each Scheme Shareholder; and
- (b) it has no existing right to be issued any other Tatts Shares or any other form of Tatts securities. Tatts undertakes that it will provide such warranty to Tabcorp as agent and attorney of each Scheme Shareholder.

7.6 Title to Scheme Shares and transfer free from encumbrance

- (a) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated under clause 4.3, Tabcorp will be beneficially entitled to the Scheme Shares transferred to it under this Scheme

pending registration by Tatts of Tabcorp in the Tatts Share Register as the holder of the Scheme Shares.

- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Tabcorp, will, at the time of transfer to Tabcorp, vest in Tabcorp free from all Encumbrances and security interests (within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and free from any restrictions on transfer of any kind.

7.7 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 4.3, and until Tatts registers Tabcorp as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Tabcorp as attorney and agent (and directed Tabcorp in each such capacity) to appoint any director, officer, secretary or agent nominated by Tabcorp as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 7.7(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Tabcorp reasonably directs; and
- (d) acknowledges and agrees that, in exercising the powers referred to in clause 7.7(a), Tabcorp and any director, officer, secretary or agent nominated by Tabcorp under clause 7.7(a) may act in the best interests of Tabcorp as the intended registered holder of the Scheme Shares.

7.8 Alterations and Conditions

Tatts may, by its counsel or solicitors, and with the consent of Tabcorp by its counsel or solicitors, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to the Scheme which the Court may impose, and each Scheme Shareholder agrees to such alterations or conditions which Tatts has agreed to.

7.9 Notices

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Tatts, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Tatts' registered office or at the Tatts Share Registry (as the case may be).

7.10 Inconsistencies

This Scheme binds Tatts and all Tatts Shareholders, and to the extent of any inconsistency, overrides Tatts' constitution.

7.11 Further assurance

Tatts and Tabcorp will execute all documents and do all acts and things as may be necessary or desirable for the implementation of, and performance of their respective obligations under, this Scheme.

7.12 Stamp Duty

Tabcorp will:

- (a) pay any stamp duty payable and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from its failure to comply with clause 7.12(a).

7.13 Governing Law

This Scheme is governed by the law applying in Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and the courts competent to determine appeals from those courts, with respect to any proceedings in connection with the Scheme.



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Attachment 2

Deed poll



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EXECUTION

Deed Poll

Tabcorp Holdings Limited



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Deed Poll

Date ►

This deed poll is made

By **Tabcorp Holdings Limited ABN 66 063 780 709**
of 5 Bowen Crescent, Melbourne, Victoria, Australia, 3004
(**Tabcorp**)

in favour of each person registered as a holder of fully paid ordinary shares in Tatts Group Limited (**Tatts**) in the Tatts Share Register as at the Scheme Record Date.

Recitals

- 1 Tatts and Tabcorp have entered into the Implementation Deed.
- 2 In the Implementation Deed, Tabcorp agreed to make this deed poll.
- 3 Tabcorp is making this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under the Implementation Deed and the Scheme.

This deed poll provides as follows:

1 Definitions and interpretation

1.1 Definitions

(a) The meanings of the terms used in this deed poll are set out below.

Term	Meaning
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
Implementation Deed	the merger implementation deed entered into between Tatts and Tabcorp dated 18 October 2016.



Term	Meaning
Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Tatts and the Scheme Shareholders, the form of which is annexed to this deed poll, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Tabcorp and Tatts.
(b)	Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll.

1.2 Interpretation

Sections 1.2 and 1.3 of the Scheme apply to the interpretation of this deed poll, except that references to 'this Scheme' are to be read as references to 'this deed poll'.

1.3 Nature of deed poll

Tabcorp acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Tatts and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Tabcorp.

2 Conditions to obligations

2.1 Conditions

This deed poll and the obligations of Tabcorp under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of Tabcorp under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective on or before the End Date,

unless Tabcorp and Tatts otherwise agree in writing.

2.3 Consequences of termination

If this deed poll terminates under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Tabcorp is released from its obligations to further perform this deed poll except those obligations under clause 7.1; and



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- (b) each Scheme Shareholder retains the rights they have against Tabcorp in respect of any breach of this deed poll which occurred before it was terminated.

3 Scheme Consideration

3.1 Undertaking to provide Scheme Consideration

Subject to clause 2, Tabcorp undertakes in favour of each Scheme Shareholder to:

- (a) in relation to cash component of the Scheme Consideration (**Cash Consideration**), deposit, or procure the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Cash Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Tatts as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Tabcorp's account;
- (b) in relation to the scrip component of the Scheme Consideration (**Scrip Consideration**), provide the Scrip Consideration to each Scheme Shareholder in accordance with the terms of the Scheme; and
- (c) undertake all other actions and obligations attributed to it under the Scheme, subject to and in accordance with the provisions of the Scheme.

3.2 Shares to rank equally

Tabcorp covenants in favour of each Scheme Shareholder that the New Tabcorp Shares are issued to each Scheme Shareholder in accordance with the Scheme will:

- (a) rank equally with all Tabcorp Shares existing at the issue date;
- (b) be duly and validly issued in accordance with all applicable laws and Tabcorp's constitution; and
- (c) be issued fully paid and free from any mortgage, charge, lien, encumbrance or other security interest, or any third party right.

4 Warranties

Tabcorp represents and warrants in favour of each Scheme Shareholder, in respect of itself, that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and



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- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

5 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Tabcorp has fully performed its obligations under this deed poll; or
(b) the earlier termination of this deed poll under clause 2.

6 Notices

6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
(b) addressed to Tabcorp in accordance with the details set out below (or any alternative details nominated by Tabcorp by Notice).

Address	Addressee	Email
5 Bowen Crescent, Melbourne, VIC 3004	The Company Secretary	Fiona.Mead@tabcorp.com.au

6.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
(b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By email to the nominated email address	When the email (including any attachment) comes to the attention of the recipient party or a person acting on its behalf.



7 General

7.1 Stamp duty

Tabcorp:

- (a) will pay all stamp duty and any related fines and penalties in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a).

7.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in Victoria, Australia.
- (b) Tabcorp irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll.

7.3 Waiver

- (a) Tabcorp may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) The meanings of the terms used in this clause 7.3 are set out below.

Term	Meaning
conduct	includes a failure or delay in the exercise or partial exercise of a right.
right	any right arising under or in connection with this deed poll (including for a breach of or default under this deed poll) and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

7.4 Variation

A provision of this deed poll may not be varied unless the variation is agreed to by Tabcorp and:

- (a) if before the First Court Date, the variation is agreed to by Tatts; or
- (b) if on or after the First Court Date, the variation is agreed to by Tatts and the Court indicates that the variation would not of itself preclude approval of the Scheme,



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in which event Tabcorp will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

7.5 Cumulative rights

The rights, powers and remedies of Tabcorp and the Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

7.6 Assignment

- (a) The rights created by this deed poll are personal to Tabcorp and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Tabcorp.
- (b) Any purported dealing in contravention of clause 7.6(a) is invalid.

7.7 Further action

Tabcorp must, at its own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.



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Signing page

Executed as a deed poll

Signed sealed and delivered by
Tabcorp Holdings Limited
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Recommended combination of Tabcorp Holdings Limited and Tatts Group Limited

Tabcorp and Tatts to combine to create a world-class, diversified gambling entertainment group

19 October 2016

Disclaimer

This presentation (**Presentation**) provides information in summary form and should be read in conjunction with the announcement in relation to the proposed transaction between Tabcorp Holdings Limited (**Tabcorp**) and Tatts Group Limited (**Tatts**) (the **Transaction**) that was released today. This Presentation does not purport to contain all the information that investors may require in order to make a decision in relation to the Transaction. It contains selected information only. Further information will be contained in additional documents to be released by Tatts and/or Tabcorp.

Neither of Tabcorp nor Tatts, nor their respective related bodies corporate, directors, officers, employees, agents, contractors, consultants or advisers makes or gives any representation, warranty or guarantee, whether express or implied, that the information contained in this Presentation is complete, reliable or accurate or that it has been or will be independently verified, or that reasonable care has been or will be taken by them in compiling, preparing or furnishing this Presentation and its contents.

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Estimates and forward looking information contained in this Presentation are illustrative and are not representations as to future matters, are based on many assumptions and are subject to significant uncertainties and contingencies, many (if not all) of which are outside the control of Tabcorp and Tatts. Actual events or results may differ significantly from the events or results expressed or implied by any estimate, forward looking information or other information in this Presentation. No representation is made that any estimate or forward looking information contained in this Presentation will be achieved and forward looking information will not be warranted.

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Transaction benefits

Tabcorp and Tatts to combine to create a world-class, diversified gambling entertainment group

1 Creates a leading, diversified portfolio of gambling entertainment businesses

- long-dated suite of licences
- well positioned to invest, innovate and compete in a rapidly evolving marketplace
- larger and more diversified earnings base, with a broad national footprint
- well positioned to pursue growth opportunities globally

2 Provides a wide range of benefits for stakeholders and enhances the long-term sustainability of the Australian racing industry

- at least \$50 million per annum in additional funding expected to flow to the racing industry in Australia
- provides a pathway to national pooling for pari-mutuel wagering, subject to regulatory and racing industry approvals

3 Significant value creation expected for both sets of shareholders

- expected to deliver at least \$130 million per annum EBITDA synergies and business improvements, net of benefits to the racing industry
- expected to be EPS accretive (before significant items) and value accretive for both Tabcorp and Tatts shareholders
- Combined Group expected to target a dividend payout ratio of 90% of NPAT before significant items and amortisation of the Victorian Wagering and Betting Licence
- Combined Group expected to undertake a share buyback of \$500 million, post implementation of the Transaction and subject to Board approval and market conditions

4 Greater scale and strong balance sheet position

- combined pro forma enterprise value of approximately \$11.3 billion¹, revenue of over \$5 billion and EBITDA of over \$1 billion²
- balance sheet strength better facilitates growth and potential capital management opportunities – Combined Group intends to have an investment grade credit rating

5 Complementary businesses, delivering a winning offer for customers

- combines the best of both businesses to support investment and innovation, including best-in-class digital products
- supports an enhanced range of products and experiences across each of our channels and products

Notes:

- 1 Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction and pro forma net debt of the Combined Group as at 30 June 2016
- 2 Based on reported FY 2016 revenue and EBITDA for Tabcorp and Tatts. Excludes the impact of synergies and business improvements

Transaction summary

Tabcorp and Tatts have entered into an Implementation Deed to combine the two companies

Structure	<ul style="list-style-type: none"> • Tatts shareholders to receive 0.80 Tabcorp shares plus 42.5 cents cash for each Tatts share held <ul style="list-style-type: none"> – Tatts intends to pay its shareholders a fully-franked special dividend of 20 cents per share (subject to the availability of franking credits) immediately prior to implementation of the Transaction in lieu of part of the cash consideration. A fully-franked dividend of 20 cents per share would have approximately 8.6 cents per share of franking credits attached¹ • Transaction to be implemented via a Tatts Scheme of Arrangement
Combined Group	<ul style="list-style-type: none"> • World-class, diversified gambling entertainment group • Combined Group pro forma enterprise value of approximately \$11.3 billion² and expected to be an ASX50 company • Tabcorp and Tatts shareholders will own approximately 42% and 58% of the Combined Group, respectively³
Board and management composition	<ul style="list-style-type: none"> • Board will be comprised of the existing Tabcorp Directors with Paula Dwyer as Chairman • David Attenborough will be Managing Director and Chief Executive Officer of the Combined Group and Damien Johnston will be Chief Financial Officer • Tatts Chairman Harry Boon will join the Board of the Combined Group as a Non-Executive Director
Key approvals and Transaction timing	<ul style="list-style-type: none"> • Obtaining competition, regulatory and other approvals • Tatts shareholders approving the Tatts Scheme of Arrangement • Obtaining Court approval for the Scheme and an independent expert concluding the Transaction is in the best interests of Tatts shareholders • Other conditions as set out in the Implementation Deed (appended to the Transaction announcement) • Completion expected mid-2017
Board and shareholder support	<ul style="list-style-type: none"> • Transaction is unanimously recommended by the Boards of Tabcorp and Tatts⁴ • AustralianSuper, one of Tatts' largest shareholders, has indicated that it intends to vote its Tatts shares in favour of the Transaction, in the absence of a superior proposal and subject to there being no material adverse change in circumstances

Notes:

1 Whilst Tatts estimates the special dividend will be 20 cents per Tatts share, under the Implementation Deed Tatts is able to pay a special dividend of up to 25 cents per share (subject to the availability of franking credits)

2 Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction and pro forma net debt of the Combined Group as at 30 June 2016 (including estimated transaction costs). Excludes impact of synergies and business improvements


3 Based on Tabcorp's ordinary shares outstanding of 835 million and Tatts' fully diluted shares outstanding of 1,469 million (including performance rights) as at 18 October 2016

4 In the Tatts Board's case, subject to there being no superior proposal and also to an independent expert concluding the Transaction is in the best interests of Tatts shareholders

Overview of the Combined Group

Combination delivers scale to support future growth and an enhanced ability to invest and innovate in a highly competitive and rapidly evolving market

- Combined pro forma enterprise value of approximately \$11.3 billion and market capitalisation of \$8.6 billion^{1,2}
- Combined pro forma FY 2016 revenue of over \$5 billion and EBITDA of over \$1 billion, before synergies and business improvements

Pro forma Combined Group, before synergies and business improvements and any proposed share buyback	Tabcorp	 TattsGroup	Combined Group ³
Market capitalisation ¹ (\$ million)	4,084	5,273	8,644
Net debt (\$ million) ² — 30 June 2016	870	1,041	2,626
Enterprise value (\$ million)	4,955	6,315	11,270
Revenue (\$ million) — FY 2016	2,189	2,928	5,117
EBITDA (\$ million) — FY 2016	516	495	1,011
EBIT (\$ million) — FY 2016	337	420	757
Net debt / EBITDA (x) (pre synergies and business improvements)	1.7x	2.1x	2.6x
Gross debt / EBITDA (x) (pre synergies and business improvements)	1.9x	2.2x	2.8x

- Transaction costs are estimated to be approximately \$90 million

Source: Bloomberg as at 18 October 2016, Company filings

Notes:

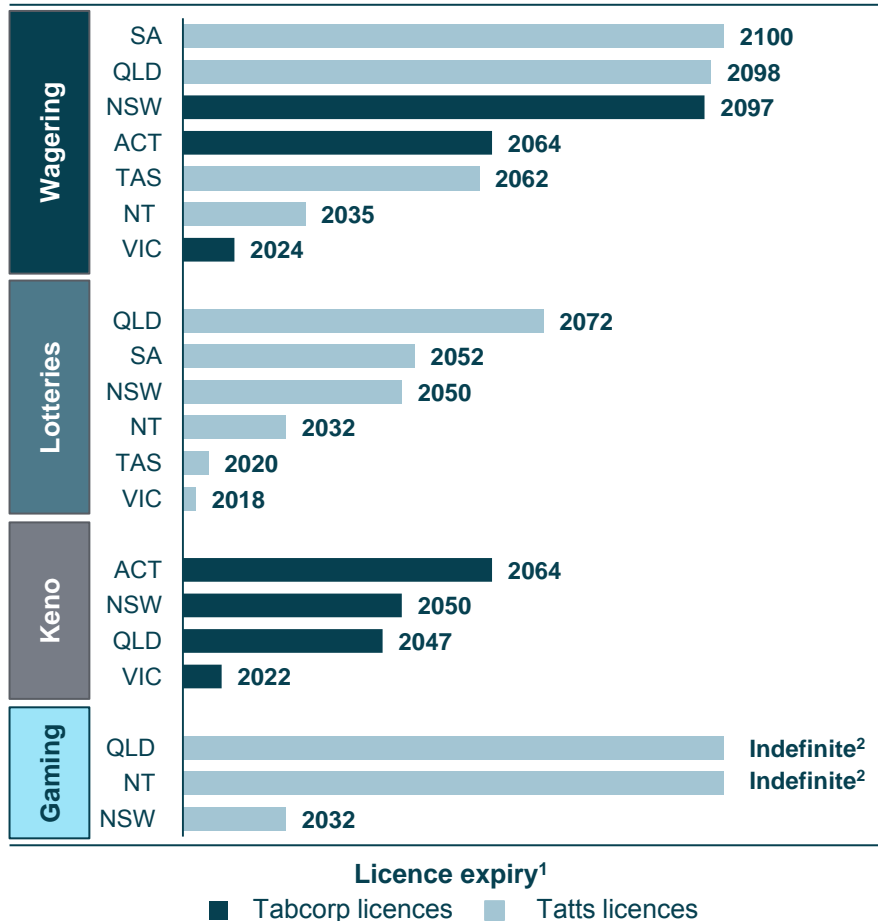
1 Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction

2 Pro forma net debt of the Combined Group as at 30 June 2016 (including estimated transaction costs of \$90 million) adjusted for cash paid to Tatts shareholders under the Transaction of \$624 million based on a cash consideration component of 42.5 cents per Tatts share and Tatts' fully diluted shares outstanding of 1,469 million (including performance rights)

3 Does not account for any differences in accounting treatment, disclosure, inter-group eliminations and acquisition accounting adjustments. Presented before synergies and business improvements

Stronger and more diversified portfolio of businesses

Combination delivers an enhanced portfolio of long-dated licences and a more diverse earnings base



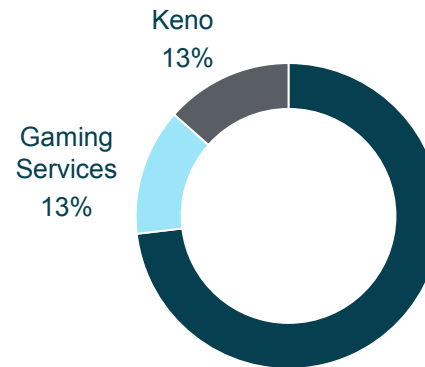
Source: Company filings

Notes:

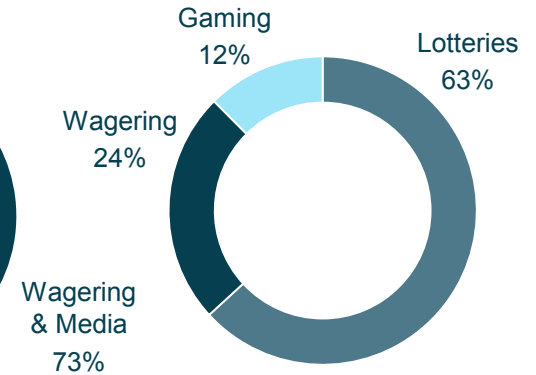
1 Tatts' NT Wagering licence expires in 2035, Tabcorp's NT Wagering licence in 2020; some licences (e.g. Tabcorp's VIC Wagering, Tatts' TAS Wagering) have renewal options post expiry; Tatts' SA Lotteries licence includes SA Keno; both Tatts and Tabcorp are accredited gaming operators in Australia

2 Indefinite rolling renewal capability

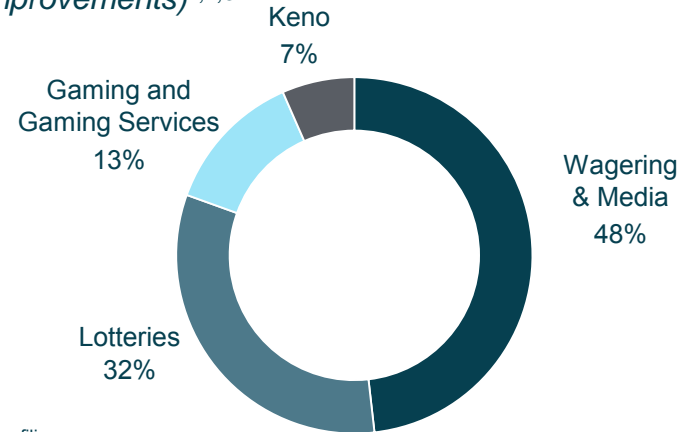
FY 2016 EBITDA—Tabcorp^{1,2}



FY 2016 EBITDA—Tatts^{1,2,3}



Pro forma FY 2016 EBITDA—Combined Group (before synergies and business improvements)^{1,2,3}



Source: Company filings

Notes:

1 Figures expressed on a pre adjustment basis, as currently reported by Tatts and Tabcorp before unallocated corporate expenses, excluding discontinued operations















2 Percentages may not sum to 100% because of rounding

3 Contribution of Lotteries earnings includes Tatts' SA Keno business

Combines two largely complementary businesses

Combines two Australian industry icons, creating a champion of gambling entertainment with a national footprint across a broad suite of leading brands and products

The Combined Group's businesses, brands and jurisdictions

Business	Key brands	Geographic reach								
		VIC	NSW	ACT	QLD	SA	TAS	NT	WA	Intl.
Wagering	   <small>BACKED BY TABCORP</small> 	✓	✓	✓	✓	✓	✓	✓		✓
Lotteries	    	✓	✓	✓	✓	✓	✓	✓		
Keno		✓	✓	✓	✓	✓				
Gaming and Gaming Services	  <small>TABCORP GAMING SOLUTIONS</small>  <small>Limited</small>	✓	✓	✓	✓	✓	✓	✓	✓	
Media		✓	✓	✓	✓	✓	✓	✓	✓	✓

Source: Company filings, company website

Note:

1 Subject to implementation of the Intecq scheme of arrangement

Significant synergies to be generated from the combination

Expected to deliver at least \$130 million of annual EBITDA synergies and business improvements, net of benefits to the racing industry. Estimated synergies and business improvements valued at approximately \$1.4 billion¹

Opex synergies	<ul style="list-style-type: none"> • Technology integration and systems optimisation • Consolidation of wagering functions • Corporate cost rationalisations • Procurement benefits from increased scale
Wagering performance optimisation under the TAB brand	<ul style="list-style-type: none"> • Fixed odds yield improvement <ul style="list-style-type: none"> – Tabcorp intends to roll-out its leading risk management systems and processes into the UBET business – the larger combined Tabcorp and Tatts fixed odds book further increases the risk management capability of the Combined Group – fixed odds yields in the ACT improved significantly in the 12 months after Tabcorp's acquisition of ACTTAB • Wagering turnover growth <ul style="list-style-type: none"> – alignment of product offering between Tatts' and Tabcorp's wagering operations, including TAB products such as Cash Out and Quaddie Cash Out (subject to regulatory approval) – targeted investment in the UBET retail network based on TAB's market-leading multi-channel offering – combined digital expertise to deliver best-in-class digital products and customer experience – potential further benefits from the increased attractiveness of merged pools, subject to regulatory and racing industry approvals
Keno performance optimisation	<ul style="list-style-type: none"> • Extend the key drivers of the Keno transformation of brand, pooling and digital to South Australia (subject to regulatory approval) <ul style="list-style-type: none"> – following the introduction of similar measures in Victoria during FY 2016, Tabcorp achieved turnover growth of 18%
Capex synergies	<ul style="list-style-type: none"> • It is expected that approximately \$10 million per annum of capex synergies (net of benefits to the racing industry) will be available to the Combined Group through the rationalisation of wagering systems development functions. These are in addition to the \$130 million annual EBITDA synergies and business improvements
Integration	<ul style="list-style-type: none"> • Integration is expected to be completed in approximately two years, subject to the receipt of regulatory approvals • Full run-rate of synergies and business improvements expected in the first full year post integration • Net one-off integration costs and capital expenditure is estimated at approximately \$110 million

Source: Bloomberg as at 18 October 2016, Company filings

Note:

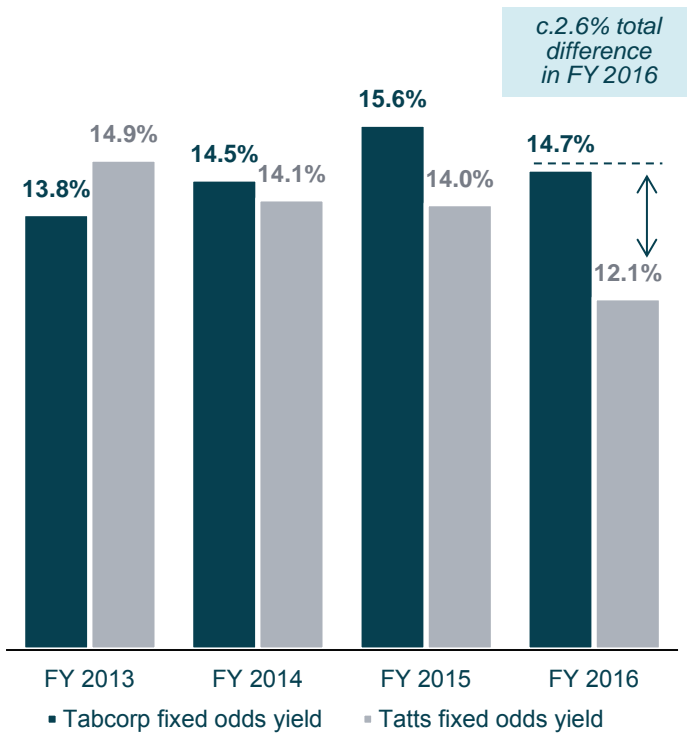
¹ Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction and based on Bloomberg consensus FY 2017 EBITDA estimates as at 18 October 2016, implying an EV/EBITDA multiple for Tabcorp of 9.1x, Tatts of 12.4x and an implied weighted average for the Combined Group of 10.7x

Summary of wagering performance optimisation under the TAB brand

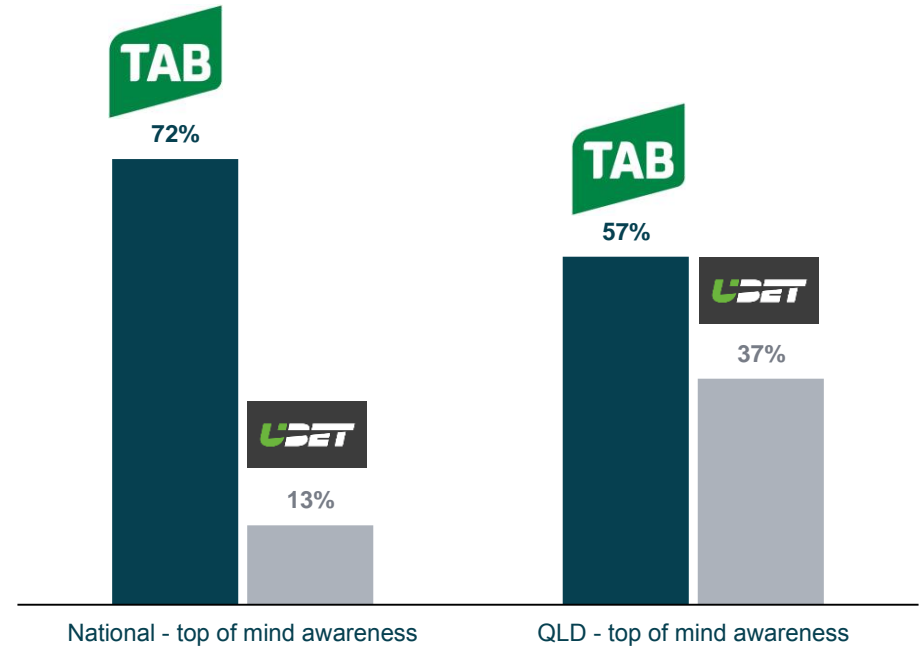
The Combined Group is expected to benefit from Tabcorp's fixed odds yield management capability and market leading TAB brand and product offering

Significant earnings are expected to be available through combining fixed odds book management

The Combined Group is expected to benefit from TAB's market leading brand and product offering



Source: Tabcorp and Tatts management



Source: Brand Health Tracking (FiftyFive5) September 2016

Increased financial scale and balance sheet strength

Combined Group is expected to be an ASX50 listed company, with a strong balance sheet and an investment grade credit rating

- Strong balance sheet
 - increased financial scale and associated balance sheet strength provides an enhanced platform to pursue growth opportunities
- Larger and more diversified earnings base
- The Combined Group will target a gross debt to EBITDA ratio of 3.0x to 3.5x and intends to have an investment grade credit rating
- Expects to undertake a share buyback of \$500 million, post implementation of the Transaction and subject to Board approval and market conditions
- Greater relevance to equity investors
 - Combined Group expected to be one of the largest ASX-listed gambling companies, based on free float market capitalisation¹
- Greater relevance to debt investors
 - improved credit profile given diversification benefits of lotteries and increased scale of wagering business



Source: Bloomberg as at 18 October 2016, Company filings

Note:

¹ Based on the pro forma market capitalisation for the Combined Group of \$8.6 billion and free float market capitalisations of ASX-listed gambling related businesses as at 18 October 2016

Benefits to both sets of shareholders

Combination to deliver significant benefits to both sets of shareholders

	 TattsGroup	 Tabcorp
Exposure to an enhanced business profile, with a more diversified portfolio of long-dated gambling licences, that is better placed to invest, innovate and compete	✓	✓
EPS accretion (before significant items) and value accretion expected, benefiting from at least \$130 million of annual EBITDA synergies and business improvements, net of benefits to the racing industry	✓	✓
Improved ability to pursue global investment opportunities	✓	✓
Improved financial position and balance sheet strength, with an intended investment grade credit rating and the capacity to undertake capital management	✓	✓
\$500 million share buyback expected, post implementation of the Transaction (subject to Board approval and market conditions)	✓	✓
Expected target dividend payout ratio of 90% of NPAT before significant items and amortisation of the Victorian Wagering and Betting Licence	✓	✓

The Transaction implies a value of \$4.34 per Tatts share (before taking into account the value from synergies and business improvements and any potential re-rating) which represents a premium of 20.8% to the most recent closing price¹, a premium of 18.4% to the 1-month VWAP² and a FY 2016 EV/EBITDA multiple of 15.0x for Tatts³

Source: Bloomberg as at 18 October 2016, Company filings

Note:

1 Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction

2 Based on the 1-month volume weighted average price of Tatts shares up to and including 17 October 2016, being the last trading day prior to the announcement of the Transaction

3 Based on Tatts' reported net debt of \$1,041 million as 30 June 2016, FY 2016 reported EBITDA of \$495 million, Tatts' fully diluted shares outstanding of 1,469 million (including performance rights) and the Tabcorp share price as at 17 October 2016, being the last trading day prior to the announcement of the Transaction

Enhancing the sustainability of the Australian racing industry

The combination creates a strong wagering operator, committed to enhancing the long-term sustainability of Australia's racing industry

- Tabcorp and Tatts are together the largest source of funding for the Australian racing industry, having delivered approximately \$1 billion to the racing industry in FY 2016
- The Combined Group's commitment to investment, national footprint and enhanced operational strength will create a stronger business, and provide a strong financial base to support the racing industry and the livelihood of its many participants and related industries
- The combination is expected to deliver substantial financial benefits to underpin the sustainability of the Australian racing industry
 - provides a more efficient funding model
 - the Transaction is expected to result in at least \$50 million per annum of additional funding to the racing industry, which will flow to participants and related industries across Australia
 - supports increased prize money and provides more capital for investment in racing infrastructure
 - creates broader economic benefits, including in regional areas
- The Combined Group will work to drive industry growth, investing in innovation across products and channels to improve the retail experience and deliver best-in-class digital platforms
 - national footprint offering a broader suite of market-leading products
 - better placed to invest in innovation across an expanded platform
 - provide a pathway to national pari-mutuel pooling, subject to racing industry and regulatory approvals, and an enhanced ability to adopt strategies to address the national decline in pari-mutuel betting
 - Tabcorp's track record of investment and racing industry returns delivers greater certainty of funding to the industry nationally

Enhancing the strength of Australian business partners

The combination is expected to deliver material benefits to Tatts' and Tabcorp's business partners including lottery retail agents, licensed venues and TAB agencies

Lottery retail agents (newsagents and convenience stores)

- Continue to proactively work with retail agents to grow and attract new customers
- Continued commitment to invest in product innovation, customer experience and targeted digital integration

Licensed venues (pubs and clubs)

- Continued integration of digital experience into retail venues to allow pubs and clubs to participate in the growth of digital wagering
- Increased investment in the combined retail network and the venue-based customer experience to deliver an improved offer for licensed venue customers
- Extend the key drivers of the Keno transformation of brand, pooling and digital to South Australia

TAB agencies

- Continued integration of digital experience into retail to allow TAB agencies to participate in the growth of digital wagering
- Continued commitment to invest in customer experience and product initiatives

Enhancing the customer offering

The Combined Group will deliver a winning offer for customers, including an increased range of products and high quality customer experiences across each channel

- The combination is expected to significantly enhance customer experiences across each of the Combined Group's products and channels:
 - better positioned to continue to invest in retail networks and provide compelling customer experiences
 - combined business allows us to provide a broader and more innovative suite of products, as well as an enhanced ability to introduce new customer-led products and omni-channel experiences
 - combined digital expertise to deliver best-in-class digital products and user experiences across the Combined Group's digital channels
 - results in larger fixed odds books and provides a pathway to delivering deeper and more liquid betting pools, increasing the attractiveness of pari-mutuel products to customers
- The Combined Group will continue to deliver world-class customer service, building on each organisation's significant customer service expertise
- The combination of two of Australia's most respected and trusted operators will ensure a strong continued focus on and commitment to responsible gambling

Conclusion

The Transaction creates a world-class, diversified gambling entertainment group with a wide range of benefits to all key stakeholders

Shareholders



The Australian racing industry



Business partners



Customers



Our people



Both Boards unanimously recommend the Transaction



19 October 2016

Tabcorp and Tatts to combine to create a world-class, diversified gambling entertainment group

- Creates a leading, diversified portfolio of gambling entertainment businesses well placed to compete in a rapidly evolving marketplace and pursue growth opportunities globally
- Anticipated to provide a wide range of benefits for stakeholders and is expected to result in at least \$50 million per annum of additional funding to the Australian racing industry, which enhances its long term sustainability
- Pro forma enterprise value of approximately \$11.3 billion¹, revenue of over \$5 billion, EBITDA of over \$1 billion² and a strong balance sheet with an intended investment grade credit rating
- Combination expected to deliver at least \$130 million of annual EBITDA synergies and business improvements, net of benefits to the racing industry
- Transaction expected to be EPS accretive (before significant items) and value accretive for both Tabcorp and Tatts shareholders
- Combined Group expected to target a dividend payout ratio of 90% of net profit after tax, before significant items and amortisation of the Victorian Wagering and Betting Licence
- Combined Group expected to undertake a \$500 million share buyback, post implementation of the Transaction and subject to Board approval and market conditions
- Completion expected mid-2017 following Tatts shareholder, regulatory and other approvals
- Transaction is unanimously recommended by the Boards of Tabcorp and Tatts³

Transaction details

Tabcorp Holdings Limited ("Tabcorp") and Tatts Group Limited ("Tatts") are pleased to announce the companies have reached an agreement to combine the two companies via a Tatts Scheme of Arrangement in which Tatts shareholders will receive 0.80 Tabcorp shares plus 42.5 cents cash for each Tatts share held (the "Transaction").

The Transaction will create a world-class, diversified gambling entertainment group, with a pro forma enterprise value of approximately \$11.3 billion¹, a national footprint and a diverse suite of product offerings across wagering, media, lotteries, Keno and gaming services (the "Combined Group").

Based on the most recent closing price of Tabcorp shares (\$4.89 per share as at 17 October 2016), the Transaction implies a value of \$4.34 per Tatts share (before the value of synergies and business improvements). This represents:

- a premium of approximately 20.8% to the most recent closing price of Tatts shares (\$3.59 per share);

¹ Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction and pro forma net debt of the Combined Group as at 30 June 2016

² Based on reported FY 2016 revenue and EBITDA for Tabcorp and Tatts. Excludes the impact of synergies and business improvements

³ In Tatts Board's case, subject to there being no superior proposal and also to an independent expert concluding the Transaction is in the best interests of Tatts shareholders



- a premium of approximately 18.4% to the 1-month volume weighted average price ("VWAP") of Tatts shares (\$3.66 per share)⁴; and
- an implied enterprise value (EV) for Tatts of \$7.4 billion and an implied FY 2016 EV/ EBITDA valuation multiple of 15.0x.⁵

On completion of the Transaction, existing Tabcorp shareholders will own approximately 42% of the Combined Group and existing Tatts shareholders will own approximately 58%.⁶

Based on a blended FY 2017 EV/EBITDA multiple for Tabcorp and Tatts of 10.7x⁷, the estimated synergies and business improvements are worth approximately \$1.4 billion.⁸

Taking into account the estimated synergies and business improvement benefits, the Transaction implies a pro forma value uplift for Tatts shareholders of approximately 30% per Tatts share (before taking into account any potential market re-rating).⁹

Tatts intends to pay its shareholders a fully-franked special dividend of 20 cents per share¹⁰ (subject to the availability of franking credits) immediately prior to implementation of the Transaction in lieu of part of the cash consideration. A fully-franked dividend of 20 cents per share would have approximately 8.6 cents per share of franking credits attached.

The Directors of both Tabcorp and Tatts believe the Transaction represents a unique and compelling opportunity to create significant value for Tabcorp and Tatts shareholders, a winning offer for customers and material benefits for stakeholders, including the racing industry, TAB agencies, licensed venues, small businesses, and Federal, State and Territory Governments and regional communities.

The Directors of Tabcorp believe the Transaction is in the best interests of Tabcorp shareholders and unanimously support the Transaction. The Directors of Tatts believe the Transaction is in the best interests of Tatts shareholders and unanimously recommend that Tatts shareholders vote in favour of the Transaction, in the absence of a superior proposal and subject to an independent expert concluding the Transaction is in the best interests of Tatts shareholders. Subject to those considerations, the Directors of Tatts intend to vote all shares they personally hold in favour of the Transaction.

AustralianSuper, one of Tatts' largest shareholders, has indicated that it intends to vote its Tatts shares in favour of the Transaction, in the absence of a superior proposal and subject to there being no material adverse change in circumstances.

⁴ Based on the 1-month volume weighted average price of Tatts shares up to and including 17 October 2016, being the last trading day prior to the announcement of the Transaction

⁵ Based on Tatts' reported net debt of \$1,041 million as 30 June 2016, FY 2016 reported EBITDA of \$495 million, Tatts' fully diluted shares outstanding of 1,469 million (including performance rights) and the Tabcorp share price as at 17 October 2016, being the last trading day prior to the announcement of the Transaction

⁶ Based on Tabcorp's ordinary shares outstanding of 835 million and Tatts' fully diluted shares outstanding of 1,469 million (including performance rights) as at 18 October 2016

⁷ Based on the Bloomberg consensus FY 2017 EBITDA estimates as at 18 October 2016, implying an FY 2017 EV/EBITDA multiple for Tabcorp of 9.1x, Tatts of 12.4x and the implied weighted average for the Combined Group of 10.7x

⁸ Based on \$130 million of expected EBITDA synergies and business improvements

⁹ Based on the Bloomberg consensus FY 2017 NPAT estimates as at 18 October 2016, implying a FY 2017 P/E multiple for Tabcorp of 20.6x, Tatts of 19.6x and an implied weighted average for the Combined Group of 20.0x. Potential value uplift assuming Transaction terms and taking into account full pro forma run-rate EBITDA synergies and business improvements of \$130 million, estimated transaction costs of approximately \$90 million and net one-off estimated integration costs and capital expenditure of approximately \$110 million

¹⁰ Whilst Tatts estimates the special dividend will be 20 cents per Tatts share, under the Implementation Deed Tatts is able to pay a special dividend of up to 25 cents per share (subject to the availability of franking credits)



Chairman's comment

Tabcorp's Chairman, Paula Dwyer, said:

"In today's rapidly changing landscape, bringing together our businesses will create a strong and diversified business that is well placed to invest, innovate and compete, both in Australia and globally.

"This Transaction is expected to deliver significant value for both sets of shareholders, and material benefits to other key stakeholders including the racing industry, business partners, customers, and Governments.

"Together we will be able to pursue more investment and innovation to deliver a winning offer for customers, including best-in-class digital products and experiences.

"In wagering, combining our two complementary businesses will give us a national footprint and could create a pathway to larger wagering pools. We are excited by this opportunity, which we believe will deliver an enhanced wagering experience for our customers and, in turn, will generate stronger returns to the Australian racing industry, underpinning its sustainability.

"At the same time, bringing together our lotteries, Keno and gaming services businesses will give us the capability to create an even more compelling offer for customers and retail stakeholders as the combination increases capability, while increasing diversification."

Tatts' Chairman, Harry Boon, said:

"The combination of Tabcorp and Tatts is based on clear industrial logic and a strong and tangible synergy proposition. It comes at a time of escalating competition from new business models and rapid consolidation of gaming and wagering companies globally. The scale and efficiency benefits from this combination will provide a stronger platform in this dynamic environment.

"We believe the implied value accretion for Tatts shareholders fairly reflects the strategic value of our businesses. Further, the scrip consideration allows Tatts shareholders the opportunity to participate as shareholders in the Combined Group, with ongoing exposure to the future growth of wagering, while also retaining exposure to Tatts' unique and growing lotteries business.

"In addition to our shareholders, the benefits of this combination are also very clear for the racing industry and for customers who should, in due course and with racing industry support, be able to access deeper and more liquid wagering pools.

"A combination of Tabcorp and Tatts has been the subject of numerous discussions between the two companies over time and this transaction is fully supported by our respective Boards."

Significant value for Tabcorp and Tatts shareholders

The Directors of both Tabcorp and Tatts expect the Transaction to deliver a number of financial and other benefits to both sets of shareholders:

- The Combined Group is expected to have an attractive, diversified national portfolio of predominantly long-dated gambling licences, and be strongly positioned to invest, innovate and compete in an evolving marketplace
- The Transaction is expected to generate earnings per share accretion (before significant items) and value accretion for both Tabcorp and Tatts shareholders. The combination is expected to deliver at least \$130 million of annual EBITDA synergies and business improvements, net of benefits to the racing industry, in the first full year following completion of integration. Completion of integration is expected to take approximately two years, subject to the receipt of all necessary regulatory approvals.



Net one-off estimated integration costs and capital expenditure are estimated at approximately \$110 million

- The Combined Group is expected to have a strong balance sheet, with the capacity to pursue capital management initiatives. The Combined Group will target a gross debt to EBITDA ratio of 3.0x to 3.5x and intends to have an investment grade credit rating
- The Combined Group expects to undertake a \$500 million share buyback, post implementation of the Transaction and subject to Board approval and market conditions
- The Combined Group is expected to target a dividend payout ratio of 90% of net profit after tax, before significant items and amortisation of the Victorian Wagering and Betting Licence. Both Tabcorp and Tatts expect to continue to pay dividends in the ordinary course (subject to the Implementation Deed) until implementation of the Transaction

Benefits to the Australian racing industry and beyond

- Tabcorp and Tatts are together the largest source of funding for Australia's racing industry, having delivered approximately \$1 billion to the racing industry in FY 2016
- The Combined Group's commitment to investment, its national footprint and enhanced operational platform will create a stronger business, and provide a strong financial base to support the racing industry, strengthening its overall sustainability
- The Transaction is expected to result in at least \$50 million per annum of additional funding to the racing industry, which will flow to participants and related industries across Australia
- Additional payments to the racing industry will create broader economic benefits, including in regional areas
- The Transaction provides a pathway to national pooling for pari-mutuel wagering, subject to regulatory and racing industry approvals and an enhanced ability to adopt strategies to address the national decline in pari-mutuel betting

Profile of the Combined Group

The Combined Group is expected to have a pro forma enterprise value of approximately \$11.3 billion, market capitalisation of approximately \$8.6 billion¹¹, revenue of over \$5 billion and EBITDA of over \$1 billion.¹²

The Combined Group will have diversified national wagering, media, lotteries, Keno, and gaming operations including:

Wagering & Media

- Totalisator and fixed odds licences and retail wagering networks in NSW, VIC, QLD, SA, TAS, ACT and NT, offering wagering products in approximately 4,300 retail outlets
- National Sky Racing media business

Lotteries

- An iconic Australian lotteries business with licences to offer products in NSW, VIC, QLD, SA, TAS, ACT and NT

¹¹ Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction. Pro forma net debt of the Combined Group as at 30 June 2016 (including estimated transaction costs of \$90 million) adjusted for cash paid to Tatts shareholders under the Transaction of \$624 million based on a cash consideration component of 42.5 cents per Tatts share and Tatts' fully diluted shares outstanding of 1,469 million (including performance rights). Excludes synergies and business improvements

¹² Based on reported FY 2016 revenue and EBITDA of Tabcorp and Tatts. Excludes impact of synergies and business improvements



Keno

- Keno distribution network of over 4,200 venues across clubs, hotels and TAB agencies in VIC, QLD, SA and the ACT, and in clubs and hotels in NSW

Gaming Services

- Gaming machine monitoring operations in NSW, QLD and NT under the MAX and Odyssey¹³ brands, and venue services operations nationwide, under the TGS, Intecq¹³ and Bytecraft brands

Governance

The Combined Group will benefit from a highly experienced Board and senior executive team.

The Board will be comprised of the existing Tabcorp Board of Directors with Paula Dwyer as Chairman. Tatts Chairman Harry Boon will join the Board of the Combined Group as a Non-Executive Director following implementation of the Transaction.

David Attenborough will be Managing Director and Chief Executive Officer of the Combined Group and Damien Johnston will be Chief Financial Officer.

Implementation process

In addition to the approval by Tatts shareholders of the Tatts Scheme of Arrangement, the Transaction is also subject to satisfying regulatory conditions, including competition approval and approvals from various industry and State Government wagering, gaming, monitoring and lotteries regulators, obtaining court approval for the Scheme and an independent expert concluding the Transaction is in the best interests of Tatts shareholders.

The obligations of Tabcorp and Tatts regarding the implementation of the Transaction, the deal protections and break fee are agreed and set out in the Implementation Deed entered into by both parties. A copy of this Deed is attached to this announcement.

Tabcorp and Tatts currently expect the Transaction to complete in mid-2017 following Tatts shareholder, regulatory and other approvals.

Transaction costs are estimated at approximately \$90 million.

Presentation and market briefing details

To provide an overview of the Transaction in further detail, a presentation has also been released to the ASX today.

A briefing for investors and analysts will be held today at 10.00 a.m. AEDT. The briefing will be hosted by Paula Dwyer, Chairman of Tabcorp, Harry Boon, Chairman of Tatts, David Attenborough, Managing Director and Chief Executive Officer of Tabcorp and Robbie Cooke, Managing Director and Chief Executive Officer of Tatts.

Advisers

UBS is acting as financial adviser and Herbert Smith Freehills is acting as legal adviser to Tabcorp.

Goldman Sachs is acting as financial adviser and Clayton Utz is acting as legal adviser to Tatts.

¹³ Subject to implementation of the Intecq scheme of arrangement

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