

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: **Flavio Menezes**

Address: 19 Lomandra Place, Chapel Hill, Queensland

Occupation: Professor of Economics, University of Queensland

Date: 9 March 2017



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Filed on behalf of Tabcorp Holdings Limited (Applicant)

Prepared by Grant Marjoribanks

Herbert Smith Freehills

Tel (02) 9225 5517

Email grant.marjoribanks@hsf.com

Address for service

Level 34
161 Castlereagh Street
Sydney NSW 2000
AUSTRALIA

Fax (02) 9322 4000

Ref 82602332

Independent Expert Witness Report

For the Australian Competition Tribunal, in relation to the application by Tabcorp Holdings Limited for authorisation of merger with Tatts Group Limited

09 March 2017

Prepared by Flavio Menezes

Associate, Economic Insights

INTRODUCTION

1. I, Flavio Menezes of 19 Lomandra Place, Chapel Hill, Queensland, have been engaged by Herbert Smith Freehills (HSF) to provide an independent expert report in relation to an application by Tabcorp Holdings Limited (Tabcorp) to the Australian Competition Tribunal for authorisation of a proposed merger with the Tatts Group Limited (Tatts).
2. Exhibited to me at the time of signing this report and marked "Exhibit FXM-1" is a bundle of documents. Also exhibited to me at the time of signing this report is another bundle of documents marked "Confidential Exhibit FXM-2". Where in this report I refer to tabs in FXM-1 or FXM-2, I am referring to the tabs of Exhibit FXM-1 and Confidential Exhibit FXM-2 respectively. I also refer to documents by reference to their unique document number beginning with a "TBP" prefix. I understand that Tabcorp and Tatts claim confidentiality over Confidential Exhibit FXM-2.
3. **Tab 1 of FXM-1 [TBP.001.027.5154]** is the expert retainer letter, which attaches the Federal Court Harmonised Expert Witness Code of Conduct. A letter of instructions listing the questions which HSF has asked me to answer, and providing instructions, is included as **Tab 2 of FXM-1 [TBP.001.029.0003]**. In particular, HSF has sought my opinion on:¹

*'(a) What are the economic principles and methodologies relevant to analysing the competitive effects and total economic welfare effects of Tabcorp's proposed merger with Tatts (the **proposed merger**) on:*

1. *auctions or tenders for State Government licences for retail wagering, lotteries or keno?*
2. *the sale of State owned wagering businesses (such as RWWA)?*

¹ **Tab 2 of FXM-1 [TBP.001.029.0003]**.

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(b) What would be the likely competitive effects and total economic welfare effects of the proposed merger on future processes for the award of State Government retail wagering licences (or in the case of Western Australia, the sale of RWWA), lotteries licences or Keno licences?’

4. **Tab 1 of FXM-2 [TBP.001.027.1907]** is a list of the assumptions that I have been asked to make in the letter of instructions that is at **Tab 2 of FXM-1 [TBP.001.027.1907]**. These assumptions are referred to in my report, either in the text or in footnotes, and are at Tab 1 of FXM-2, save that the confidentiality markings in this version have been updated. I have been asked to have regard to the following documents in preparing my report:

- (a) The Excel spreadsheet referred to as “TBP.001.018.5686.xlsx” containing wagering turnover data for financial years 2006 to 2016 (**Tab 2 of FXM-2 [TBP.001.018.5686]**);
- (b) The Excel spreadsheet referred to as “TBP.001.022.0002.xlsx” containing Tabcorp phone and online betting account data (**Tab 3 of FXM-2 [TBP.001.022.0002]**);
- (c) The Excel spreadsheet referred to as “Tatts Digital and Telephone Wagering Turnover FY12 to FY16” (also with Tatts document identification number “TAT.001.015.0804”) containing Tatts phone and online betting account data (**Tab 4 of FXM-2 [TBP.001.015.0804]**);
- (d) Tabcorp ASX release regarding the proposed merger with Tatts dated 19 October 2016 (“TBP.011.001.0110.pdf”) (**Tab 3 of FXM-1 [TBP.011.001.0110]**);
- (e) Presentation released to the ASX dated 19 October 2016 (“TBP.006.001.0121.pdf”) (**Tab 4 of FXM-1 [TBP.006.001.0121]**); and
- (f) Merger Implementation Deed (“TBP.004.011.0610.pdf”) (**Tab 5 of FXM-1 [TBP.004.011.0610]**).

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5. The opinions I have set out in this report are substantially based on my specialised knowledge and understanding of the economic theory and practice of auctions and tenders. I developed this knowledge and understanding through formal study, by undertaking research and authoring publications in areas relevant to the issues covered in this report, and through extensive industry experience as a consultant.
6. I hold the following qualifications:
 - (a) Bachelor of Economics, UERJ (Brazil), 1985
 - (b) Master of Economics, FGV/EPGE (Brazil), 1988
 - (c) PhD in Economics, The University of Illinois at Urbana-Champaign (USA), 1993. PhD thesis: Four Essays on Auction Theory.
7. Upon completion of my PhD in economics, I joined the faculty at the Australian National University (ANU). I was appointed a Professor of Economics and Professor of Regulatory Economics at the ANU in 2003. I was also the Foundation Director of the Australian Centre of Regulatory Economics from 2003 to 2006, when I left the ANU to join the University of Queensland as a Professor of Economics, where I remain. I was also a part-time Vice President with the Regulatory Economics and Public Policy Practice at CRA International in Canberra from 2005 to 2006 and a Senior Consultant from 2006 until May 2007. I have worked as an Associate of Economic Insights Pty Ltd on a number of projects.
8. I have published over 60 journal articles on the economics of auctions, competition and regulatory economics,² industrial organization, and market design.³ I have also authored 'An

² There is a deep connection between auction theory and monopoly pricing. See, for example, Klemperer, P., (2004), Auction Theory and Practice: The Toulouse Lectures in Economics, Princeton University Press, Chapter 2, Section 2.4. Available at http://www.nuff.ox.ac.uk/users/klemperer/virtualbook/11_chapter2.pdf. Therefore, there is a connection between auction theory and economic regulation. The former studies the allocation of goods and services under asymmetric information; that is, when the seller does not know the value that buyers place on the goods and services for sale. The latter studies how to regulate a monopolist

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Introduction to Auction Theory', a reference book in auction theory published by Oxford University Press. Its second-edition, in paperback, was published in 2008.

9. I have presented seminars and delivered lectures in the Americas, Europe and in the Asia Pacific Regions. I have lectured to both academic audiences and practitioners. I have had visiting positions at a number of renowned institutions. I am the co-editor of the Economic Record, and a member of the editorial board and associate editor of a number of learned journals. I am also the current President of the Economic Society of Australia (Queensland Branch), and the Deputy Chair of the Queensland Competition Authority. I am a member of the Standing Committee of the Econometric Society (Australasia), a fellow of the Academy of Social Sciences in Australia and a senior fellow of the Australian Institute of Business and Economics.
10. I have extensive relevant industry experience. Overseas consulting experience includes being the main advisor on the determination of a privatisation model for utilities, reviewing government procurement practices, and providing advice on regulatory reform and competition issues in the electricity, gas, telecommunications, banking, health and dairy industries. Consulting experiences in Australia include advising the Federal Government, AEMC, ACCC, IPART, QCA, the ACT and the Victorian Governments on market design issues in regulatory environments and providing economic advice to various private and public organisations on mergers, competition policy cases and regulatory issues in defence, energy, banking, health, transport and telecommunications.

under asymmetric information; that is, when the regulator does not know the monopolist's cost to supply the regulated service.

³ Market design applies auctions, tenders and other market mechanisms to solve allocation problems taking into account a variety of objectives and constraints such as economic efficiency, fairness, incentives and complexity. See, for example, Cramton, P. (2010), 'Market Design: Harnessing Market Methods to Improve Resource Allocation', available at <http://www.cramton.umd.edu/papers2010-2014/cramton-market-design.pdf>; Menezes, F. M. (2013), 'Market Design for New Leaders', available at http://espace.library.uq.edu.au/view/UQ:333613/WPP13_4.pdf; Roth, A., 'Market Design: Understanding markets well enough to fix them when they're broke,' 2010, available at http://www.vanderbilt.edu/AEA/econwhitepapers/white_papers/AI_Roth.pdf.

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11. A copy of my curriculum vitae with full details of my qualifications and experience is included as **Tab 6** of **FXM-1 [TBP.001.026.0850]**.
12. In completing this report I have received assistance from Dr John Fallon, principal of Economic Insights, who has assisted with research and peer reviewed the analysis in my report and its application to the facts.
13. In preparing this report I have had regard to the materials specifically identified throughout the report, in the form of footnotes or in the text.
14. I confirm that I have read, understood and complied with the Federal Court General Practice Note GPN-EXPT (Expert Evidence), including the Harmonised Expert Witness Code of Conduct Federal Court of Australia. The Note is included as **Tab 7** of **FXM-1 [TBP.001.027.2039]**.

SUMMARY OF OPINIONS

Developing an economic framework to consider the impact of the proposed merger on auctions of State licences and possible sale of RWWA

15. The answer to the first question, reproduced in paragraph 3(a) above, can be summarised as follows:

- (a) Bidding markets exhibit particular characteristics which may differ from ordinary markets, and which can have an impact on the assessment of mergers. For example, under a number of circumstances, such as when there are no incumbency advantages and entry is easy, the existence of other potential bidders after the merger may be sufficient to ensure competitive outcomes regardless of the merger. In this report, I refer to bidding markets as a general economic concept – the meeting of a seller and

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buyers in the context of auctions that are used to allocate a licence. I have not sought to define markets in a competition law sense.

- (b) As there is only one object for sale in the auction of a licence, the total (economic welfare) surplus is the highest value assigned to the object amongst all bidders and the seller. The total surplus is then split between the winner of the auction and the seller.
- (c) A merger in a bidding market that results in synergies cannot decrease unweighted total welfare (that is, total welfare that assigns the same weights to the welfare of the winner of the auction and the welfare of the seller). More specifically, a merger between the highest and second highest value bidders, which involves synergies, will result in an increase in unweighted total welfare, as the value of the highest bidder will increase, and assuming that such value is greater than the value the seller assigns to the object.
- (d) If total welfare were defined as the “weighted sum of the profits to the successful bidder and the revenue of the seller” (that is, when different weights are assigned to the winner’s profit and to the seller’s revenue), then it is only possible for weighted total welfare, under such a merger, to decrease if there is a decline in future auction prices, and the weighted decline in prices is larger than the weighted increase in the auction winner’s profits.
- (e) Determining whether an auction price decrease is likely involves coming to a view on whether the removal of a potential bidder through the merger can have an impact on future auction prices. In the absence of incumbency advantages and if entry is easy, the removal of potential bidders is unlikely to affect auction prices, because existing or new bidders, other than the merging parties, are just as likely to win the auction and to set the auction price.

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- (f) When there are incumbency advantages, a merger that involves the first and second highest value bidders has the potential to impact the auction price, as the second highest value bidder typically plays a key role in determining the auction price.
- (g) Even when the potential second highest value bidder is likely to influence the price of a future auction under the counterfactual (that is, in the absence of a merger), it is not necessarily the case that there will be a price decrease in the factual (that is, under the merger). The reason is that a seller can increase their reserve price to account for synergies, potentially leading to an increase in the expected price for the seller.
- (h) In addition to setting an optimal reserve price, a seller has a range of options to promote competition, and increase their expected revenue, from future auctions under the factual.

Applying the economic framework to consider the impact of the proposed merger on auctions of State licences and the possible sale of RWWA

16. The answer to the second question, reproduced in paragraph 3(b) above, can be summarised as follows:

- a) I consider it likely that cost synergies that arise from the proposed merger will be reflected in a higher willingness to pay by the merged entity in future auctions under the factual (with the merger), compared with the maximum willingness to pay by either Tabcorp or Tatts under the counterfactual (without the merger). It is less clear, however, the extent to which revenue synergies will result in an increase in the willingness to pay by the merged entity as some of the benefits are specific to operations in jurisdictions where licences will not go up for sale within the timeframe of my analysis and some

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benefits may be available to Tabcorp if they were to win the licence through a competitive process in the counterfactual.

- b) When assessing the impact of the merger on total welfare, and in particular on the revenue that governments can raise through the future sale of licences, I consider each auction or allocation event individually. This follows as each licence to be allocated entails a specific set of rights and obligations related to a particular activity (Keno, wagering or lottery) in a given jurisdiction, and the infrequency of the allocation events and the different characteristics of the licences imply that it may not be practical or relevant to consider licences issued by different jurisdictions as close substitutes.
- c) I will not assess the impact of the merger on allocation events that will take place beyond 2024. I note that the next allocation event after 2024 is not until 2033. The industry trends in wagering, and the emergence of online competition in lotteries and Keno, suggest that any attempts to make inferences about the likelihood of Tatts or Tabcorp being the highest or second highest value bidders in a counterfactual auction to take place in 2033 will in my view amount to speculation. In contrast, I consider the focus on pre-2024 sale events appropriate. While market trends and other events point towards evolving market dynamics, it is reasonable in my view to use current market conditions to determine whether Tatts and Tabcorp are likely to be the highest or second highest value bidders in counterfactual auctions that would take place over the next 7 years.
- d) I follow the same approach in assessing the impact of the merger in each of the sale processes under consideration: (i) I examine whether the conditions for a stylised bidding market are satisfied; (ii) If the conditions for a stylised bidding market do not hold, then I consider whether the merger can impact on future auction prices. This requires ascertaining whether Tatts or Tabcorp would likely be the second highest value bidder in the counterfactual; (iii) if this is the case, I then consider what a strategic seller

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can do to counter any potential negative impact on future auction prices following from the merger; and (iv) I assess whether the seller, the government of the jurisdiction allocating the licence, may be regarded as a strategic seller.

- e) In the case of the Victorian and Tasmanian sales of Keno licences, taking place in 2022 and 2023, respectively, I do not consider that incumbency advantages are sufficient to warrant concerns about the proposed merger. In the absence of such advantages, removing a potential bidder is unlikely to impact on the auction price. Even if incumbency advantages are more significant than what I have considered, and assuming that Tabcorp is the highest value bidder for the Victorian and Tasmanian licences, I find it unlikely that removing Tatts will have a significant impact on future auction prices. There are other existing Keno licence holders, including the Federal Group, and other potential bidders that could also be considered as just as likely to be the second highest value bidder in the two future auctions under the counterfactual.
- f) Regarding the future allocation of the Victorian lottery licence, which expires in 2018, I consider it unlikely that the proposed merger would impact negatively on the auction price outcome. For a negative impact all the following conditions need to be met: (i) Tabcorp would need to be a bidder in the counterfactual, (ii) Tabcorp would need to be the second highest value bidder in the counterfactual, and (iii) the Victorian government would not be able to react strategically to a merger that creates a higher value bidder, in designing the auction. For the reasons outlined in the report, it is unlikely that all these conditions would be met.
- g) The focus of my analysis in relation to wagering covers the impact of the proposed merger on: the auction of the Victorian wagering licence that expires in 2024; and any future sale of RWWA.

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- I. For the proposed merger to lead to lower prices in the allocation of the Victorian wagering licences, a number of conditions must be satisfied: (i) it must be the case that there are substantive incumbency advantages either as a result of pooling arrangements within Australian jurisdictions that can only be achieved by ownership of licences or as a result of Tabcorp's ownership of customer information (or both); (ii) Tatts is the second highest value bidder in the counterfactual; and (iii) the seller does not undertake actions, as a strategic seller, to benefit from the increase in the value of the licence to the highest bidder that results from the synergies generated by the merger. For the reasons discussed in my report, I consider it to be unlikely that all these conditions will hold.
- II. I consider it unlikely that the proposed merger could result in a decrease in the sales price of RWAA. Crucial to this conclusion is the low likelihood that I assign to either Tatts or Tabcorp setting the counterfactual sales price. This is due to a number of reasons including **[HIGHLY Confidential to Tabcorp]** [REDACTED], and the existence of other potential credible bidders that could just as likely be potential price setters in the counterfactual (or actually winners in the factual). Moreover, even if Tabcorp or Tatts were price setters in the counterfactual, the Western Australian government can follow a number of strategies that could lead to a higher, rather than lower, price under the factual, due to the presence of a stronger bidder created by the merger.

THE CONCEPTUAL FRAMEWORK: THE ECONOMICS OF BIDDING MARKETS

What are bidding markets?

17. Bidding markets are commonly defined as being characterised by large and infrequent auctions, with objects being awarded to a single successful bidder.⁴ Importantly, bidding markets exhibit particular characteristics that may differ from those of ordinary markets, and that can have an impact on the assessment of the competitive effects and total welfare effects of mergers. I note that I refer to bidding markets in this report as a general economic concept – the meeting of a seller and buyers in the context of auctions of licences. I have not sought to define markets in a competition law sense.
18. These characteristics, and their implications, are discussed in paragraphs 48 to 56.

The relationship between bidders' valuations in an auction and final consumer markets

19. In the case of auctions of licences, economists consider that bidders' values are derived from their estimates of the profits they can earn from the enterprise that they can undertake if successful in securing the licence. The value for a bidder in an auction of a licence to explore oil and gas is determined by a number of factors, including their estimate of how much oil they will be able to find, the price of oil, the cost of exploration and production and expected rates of return over the life of prospective reserves. Similarly, the value that a

⁴ See, for example, Patterson, D. and C. Shapiro (2001), 'Trans-Atlantic Divergence in GE/Honeywell: Causes and Lessons,' *Antitrust Magazine*, Fall Issue, pp. 18-26 (available at <http://faculty.haas.berkeley.edu/shapiro/divergence.pdf>), who quoted the European Commission's statement from Pirelli/BICC merger (European Commission (2000), Case No. Comp/M 1882-Pirelli/BICC, *Official Journal*, L70/35, available at http://ec.europa.eu/competition/mergers/cases/decisions/m1882_en.pdf). For a similar definition, see Pal, Szilágyi (2008), 'Bidding Markets and Competition Law in the European Union and the United Kingdom-Part I,' *European Competition Law Review* 29(1), pp, 16-32 (available at https://www.academia.edu/922151/Bidding_Markets_and_Competition_Law_in_the_European_Union_and_the_United_Kingdom).

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telecommunications carrier attributes to a mobile operating licence, which will inform its bidding in an auction, is related to the profits it will earn in the telecommunications business.

20. While the value of a licence to undertake a particular activity in an industry may be related to final consumer behaviour in that industry (such as in the mobile telecommunications consumer market or the wholesale market for oil), an assessment of the competitive effects and total economic welfare effect of a merger in an auction of a licence focuses exclusively on the price and welfare implications associated with the allocation of the licence via the auction. Thus, for example, the merger of two oil companies can have different competitive effects in auctions for oil and gas exploration rights and the wholesale market for oil, requiring separate analysis.

21. I have been asked to consider the competitive effects and total economic welfare effects of the proposed merger on future processes for awarding State Government retail wagering licences (including the potential sale of RWWA), lottery licences and Keno licences. To answer this question it is only necessary to focus on the value of the licences to bidders and sellers as these are the participants of the licences sales processes. In paragraphs 29-35 I explain the relationship between the value of the licence to bidders and total welfare in auctions, and in paragraphs 41 to 47 I explain the relationship between the value of the licence to bidders, bidding behaviour and how to assess the competitive effects of a merger in future auctions (that is, the effect of a merger on expected prices in future auctions).

Auctions versus Tenders

22. I note that while the analysis below focuses on auctions, the same principles can be applied to tenders. In a standard auction, bidders submit bids with a view to win the item(s) for sale. In a tender, suppliers submit offers to supply goods or services.

23. The basic economic problem that is solved by an auction is to allocate an object (or objects) to one or more buyers when the seller does not know the buyers' valuations. Buyers typically either know their own valuation or have some information about the value of the object(s). It should be clear that this problem is logically equivalent to the problem faced by a buyer who wants to allocate a contract to a potential supplier through a tender, and who does not know the suppliers' costs.

The Design of Auctions

24. Auction design includes consideration of what is to be sold or purchased in the case of a tender (for example, a buyer can split its purchase into smaller tenders over time or procure a large quantity infrequently to help ensure a lower average price), an allocation rule (for example, the winner is the bidder with the highest bid in an auction or the bidder with the lowest offer in a tender), a process for determining the price paid by the winner (for example, the winner pays their bid in an auction or receives their bid in a tender), and a number of other ancillary rules (for example, the reserve price in an auction or ceiling price in a tender, penalties for withdrawing bids, penalties for bidders' default, and pre-qualification requirements).
25. Modern auction/tender design devises rules so as to achieve particular objectives such as revenue maximisation (or cost minimisation in tenders) or economic efficiency (the object for sale is to be allocated to the user with the highest value or the contract is to be allocated to the bidder with the lowest cost in a tender). An auction that maximises the seller's expected revenue is referred to as an optimal auction. An auction that allocates the object to the bidder with the highest valuation above the seller's value is known as an efficient auction. There is a potential trade-off between efficiency and revenue maximization in auction design.

26. The reason why an efficient auction does not necessarily maximise the seller's revenue is that bidders do not typically bid their true valuations in an auction. This implies, for example, that the seller in an auction where the winner pays their bid will receive less than the highest bidders' value. How much the seller is expected to receive will depend upon the auction design. Auction theory studies the interaction between auction design features and bidders' behaviour.⁵ I will discuss how an auction can be designed to maximise – or to increase the seller's revenue over a standard auction, in paragraphs 57 to 72.

A Single Seller

27. Auction design theory and practice are by and large concerned with the case where there is a single seller. This has implications for the assessment of mergers. In particular, it is possible for a single seller to employ a range of strategies to counter the exercise of market power by buyers.⁶ These strategies will be discussed in more detail in paragraphs 73 to 77 below.

28. Sellers may also engage in post-auction negotiations with the winner or even 'negotiate with the different competing bidders'⁷ seeking to influence the sales terms and conditions for their benefit. The 2010 US Horizontal Mergers Guidelines (Section 6.2) explain the connection between negotiations (bargaining) and auctions:

⁵ For an introduction to auction theory see, for example, Klemperer, P. (1999), 'Auction Theory: A Guide to the Literature', *Journal of Economic Surveys*, 13. 227-286 (a working paper version is available online at <http://www2.econ.iastate.edu/tesfatsi/AuctionTheoryGuideToLit.Klemperer.pdf>); Menezes, F.M. and P.K. Monteiro (2008). *An Introduction to Auction Theory*. Oxford University Press; and Milgrom, P. (2004), *Putting Auction Theory to Work*. Cambridge University Press.

⁶ These strategies may also be available when there are multiple sellers (or multiple buyers in the case of a tender) in bidding markets. For example, in a recent decision (Xchanging/Agencyport, 2015) involving the merger of two suppliers in a bidding market, the UK's Competition and Merger Authority (CMA) found that large buyers were sophisticated and could follow a number of strategies to counter any attempt to exercise market power by the merged entity. Available at <https://www.gov.uk/cma-cases/xchanging-agencyport-software-europe>.

⁷ Wirth, D. (2016), To Bid or Not to Bid That is the Question: The Assessment of Bidding Markets in Merger Control,' Chapter 1, p.1, in *International Comparative Legal guide to Merger Control*, contributing editors N. Parr and C. Hammon, Global Legal Group. Available at <https://www.ashurst.com/en/news-and-insights/legal-updates/to-bid-or-not-to-bid-that-is-the-question-the-assessment-of-bidding-markets-in-merger-control/>.

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*'In many industries, especially those involving intermediate goods and services, buyers and sellers negotiate to determine prices and other terms of trade. In that process, buyers commonly negotiate with more than one seller, and may play sellers off against one another. Some highly structured forms of such competition are known as auctions. Negotiations often combine aspects of an auction with aspects of one-on-one negotiation, although pure auctions are sometimes used in government procurement and elsewhere.'*⁸

Total Welfare in Auctions

29. An important feature of the economic analysis of auctions, with implications for the assessment of mergers, is the nature of the value of the object for sale to buyers and to the seller. There are a number of dimensions of valuations that are highlighted by auction theory.⁹
30. First, a distinction can be made between 'private' values, where a bidder's valuation is independent of other bidders' valuations, and public values where the object for sale has a common but unknown value. In many cases, values will have private and common components. Valuations could also be interdependent, with one bidder's valuation for an object dependent upon other bidders' valuations.
31. Second, the valuations can be uncertain with bidders having to form a view about their valuations based on information that could be independent of each other's valuations or correlated. The third dimension is the existence of asymmetric information: each bidder knows their own information or value for the object, but not the exact value or information of other bidders, although they may have estimates. Another standard assumption in

⁸ Available at <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>.

⁹ See, for example, Menezes and Monteiro (2008, op. cit., chapters 3-5).

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auction theory is that the seller does not know buyers' valuations, but they may have estimates of these values. The seller is often assumed to have either an intrinsic value for the object for sale (its consumption value) or a resale value.

32. Crucially, for the assessment of mergers in an auction, is the relationship between valuations and welfare. In particular, while in general, in considering economic welfare, the term total surplus typically refers to sum of the net gain to consumers and producers from trading in the market, in the case of an auction the total surplus is simply the maximum of the value of the object to the successful bidder¹⁰ and the value of the object to the seller. As there is only one object for sale, the social value is the highest value assigned to the object amongst all bidders and the seller.
33. The total surplus can then be split between the winner of the auction and the seller. If the successful bidder values the object at V , the seller values the object at zero, and the auction price is P , the total surplus is equal to V , the winner's surplus is equal to $V - P$ and the seller's surplus is equal to P . V can be interpreted as the expected present value of the profits for the bidder if they win the licence.
34. An implication of the previous paragraph is that a merger that creates synergies cannot decrease total surplus. In particular, a merger between the highest and second highest value bidders that creates synergies will increase total surplus; in these circumstances, the value of the object to the winner will increase, and therefore the total surplus will increase, as long as the auction allocates the object to the highest value bidder.

¹⁰ In the case of a monopoly licence, for example, this value may be derived from the net present value of the expected profits from operating in the licensed market, and will take into account the demand from final consumers and costs. However, the focus on auctions implies a focus on the licence as the economic object, rather than the provision of the service per se. Thus, while the total surplus in the market for the licence is given by the successful bidder's value for the licence, the total surplus in the market for the provision of the service includes also the final consumers' surplus.

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35. It follows that if the total welfare is defined as total surplus from the auction, then irrespective of what happens to the auction price, total welfare will increase for a merger that creates synergies. It also follows that total welfare is unchanged by a merger that does not alter, through synergies or dissynergies, the value of the object for sale.

Assessing Total Welfare in Practice.

36. While the notion of total welfare has a well-defined meaning in the economic analysis of auctions, its application to the assessment of the proposed merger requires that I consider how total economic welfare is considered in practice. The Letter of Instructions provides the following relevant background on the assessment of mergers by the Australian Competition Tribunal:¹¹

'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;

¹¹ Letter of Instructions, (Tab 2 of FXM-1 [TBP.001.029.0003]).

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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.'

37. Applying this background to the case at hand, the key considerations, of relevance to the analysis in this report, are the scale of synergies from the merger and their likelihood of being sustained over time, and the extent to which increases in surplus accrue to a relatively broad section of the community.
38. If substantial synergies are realised and are expected to be maintained, thereby generating substantial increases in producer surplus, the shareholders of the merged entity are the ultimate beneficiaries. However, the synergies may also provide the opportunity to realise higher revenue from auctions.
39. If the merger results in less revenue for the seller (State or Territory governments) through a lower auction price, then the citizens of the relevant jurisdiction that is selling the Keno, lottery or retail wagering licences would experience a reduction in welfare from that effect. I note here that the assessment of the competitive effects of the merger (that is, whether future auction prices are likely to decrease) is a component part of the analysis of welfare.
40. A merger that increases total surplus through synergies, but that decreases the auction price, can only reduce weighted total welfare (that is, when different weights are assigned to the winner's profit and to the seller's revenue) if the price decline and the weight on such price decline are sufficiently high to offset the (weighted) benefits to shareholders.

Bidding Behaviour

41. Another important feature of auctions is that bidders bid strategically; that is, they bid so as to win the object at the lowest possible price and often this entails submitting a bid below their values. This strategic behaviour by bidders also has implications for the assessment of mergers.
42. Auction theory establishes that different auction formats entail different bidding strategies.¹² For example, consider a first-price sealed-bid auction, where the object is allocated to the bidder with the highest bid who pays their bid. In this case, the logic expounded in the previous paragraph suggests that for a bidder who has the highest value for the object to win in a first-price sealed-bid auction, it suffices for them to bid in a way to displace the bidder with the second highest valuation. This, in turn, suggests that the auction price will be close to or constrained by the highest value bidder's estimate of the valuation of the second highest bidder, the runner up in the auction.
43. Now, consider how bidders may bid in an ascending-price or English auction. In this common auction format, the auctioneer raises the auction price until there is only one bidder left, who wins the auction at the current standing price. While bidders may be willing to bid up to their values in an English auction, the winner of the auction will secure the object at a price that is determined by the value of the runner up in the auction. That is, the auction price in an English auction is also constrained by the value of the bidder with the second highest valuation, which is revealed as they drop out of the auction.
44. The role that the runner up plays in the price formation process in an auction has implications for the assessment of unilateral effects in bidding markets. In particular, a

¹² The focus here is on single object auctions due to its relevance to the proposed merger. There are, however, more complicated auction formats to allocate multiple units where bidding behaviour is more complex than what is suggested in the analysis below.

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merger that removes a bidder that may be influential in determining future auction prices is likely to raise competition concerns. This is explicitly recognised in the 2010 US Horizontal Merger (Section 6.2), which expresses the concerns in the context of tenders:

'Anticompetitive unilateral effects in these settings are likely in proportion to the frequency or probability with which, prior to the merger, one of the merging sellers had been the runner-up when the other won the business.'

45. More generally, the fact that some bidders had bid against each other in previous auctions can be seen as determining the extent to which they compete in a particular market. This point was made by the UK Office of Fair Trading in the context of the Celesio-HST merger:

*'Bidding data supplied by the parties do, however, suggest that Farillon (a subsidiary of Celesio) and HSG have bid against each other, and third parties confirm that the firms have been in direct competition. It therefore appears that the parties were competitors pre-merger.'*¹³

46. The potential mechanisms and the potential anticompetitive unilateral effects associated with a merger, involving the runner-up and the winner of previous auctions, will depend on a number of factors. This is also recognised by the US Horizontal Mergers Guidelines (Section 6.2), again in the context of tenders:

'These effects also are likely to be greater, the greater advantage the runner-up merging firm has over other suppliers in meeting customers' needs. These effects also tend to be greater, the more profitable were the pre-merger winning bids. All of these factors are likely to be small if there are many equally placed bidders.'

¹³ Office of Fair Trade (2005), 'Decision on the anticipated acquisition by Celesio AG of Healthcare Services group Plc', p. 5. Available at <https://assets.publishing.service.gov.uk/media/555de42fe5274a7084000108/celesio.pdf>.

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The mechanisms of these anticompetitive unilateral effects, and the indicia of their likelihood, differ somewhat according to the bargaining practices used, the auction format, and the sellers' information about one another's costs and about buyers' preferences.'

47. Moreover, there are a number of practical difficulties in establishing that the removal of the runner up from previous auctions from a market, through a merger with the previous winner, will impact future auction prices. This is particularly the case when auctions are infrequent, sufficiently spaced in time, and in an industry subject to changes in technology and in the behaviour of final consumers. I will return to this subject in paragraphs 109 to 114, when I explain why I focus my analysis on licences that will be allocated until 2024.

Stylised "Ideal" Bidding Markets

48. Under some circumstances, mergers in bidding markets cannot have an anticompetitive effect. This may be the case, for example, when there are no lock-in effects or incumbent advantages and when entry of new bidders is easy.
49. Incumbent advantages refer to any advantages that an incumbent firm may enjoy over rivals in future auctions. For example, ownership of specific assets, such as customised retail space, intellectual property or hardware, software and access to customer data are examples of potential incumbent advantages, if they provide an advantage to the incumbent that is not available to an entrant. The existence of incumbent advantages links the result of previous auctions to the outcome of future auctions, for example, by making it more likely that the incumbent will be a strong bidder in future auctions, and they may also make it more difficult to attract new bidders to future auctions.

50. There may also be barriers to entry that are not directly related to winning previous auctions. For example, a submarine manufacturer who won a past defence contract may not enjoy incumbent advantages, over other submarine manufacturers, in future auctions. Entry into submarine manufacturing is not easy, which suggests that the set of bidders will not change over time, which can also link the outcome of auctions over time by making it more unlikely that the incumbent will be displaced by a new firm; the incumbent nevertheless can still be displaced by another existing firm.
51. As Klemperer (2007)¹⁴ explains, the case where there are no incumbency advantages may be analogous to Bertrand competition¹⁵ and the case where entry is easy may be analogous to a perfectly contestable market.¹⁶ Only two active bidders are required to yield perfectly competitive outcomes under Bertrand competition, and so only a merger to monopoly (for example, a two to one merger) would raise competition issues. In a perfectly contestable market, only one active bidder is needed to yield competitive outcomes.
52. Of course, not many markets will satisfy the requirements for a stylised 'ideal' bidding market, which include the Bertrand or perfect contestability assumptions as well as the two other important characteristics of bidding markets, namely that auctions are infrequent and substantial, and winner takes all. This point is also made by Klemperer:¹⁷

¹⁴ Klemperer, P. (2007. P. 6), 'Bidding Markets,' *Journal of Competition Law & Economics* 3 (1), pp. 1-47. A working paper version is available at <http://www.nuffield.ox.ac.uk/users/klemperer/BiddingMarkets.pdf>.

¹⁵ If there are no incumbent advantages and all potential bidders have access to the same technology, involving constant marginal costs and no capacity constraints and produce a homogenous good (or provide similar offerings), then removing a firm from the market cannot have an impact on the tender price. Any one of the firms remaining in the market has the ability to supply the buyer at the lowest possible price. Under the standard textbook definition of Bertrand competition (see, for example, Church, J. and Ware, R. (2000), *Industrial Organization: A Strategic Approach*, pp. 256-269, McGraw-Hill), any firm in the market can supply all buyers with the amount demanded at the lowest possible price. In the case of a tender, there is only a single buyer.

¹⁶ If there are no barriers to entry or exit, then potential bidders can enter future tenders at any price above the lowest possible price. That is, under perfect contestability (see, for example, Church, J. and Ware, R. (2000), op. cit., pp. 507-513) the threat of entry fully constrains the incumbent's market power.

¹⁷ Klemperer (2007, op. cit. p. 6).

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'The kind of example often offered as a prototypical bidding market is a large, indivisible, defence contract for a major weapons system [though this would probably not satisfy the additional assumption (4)] (i.e., perfect contestability). At the opposite extreme, competition between supermarkets for consumers exhibits none of these features. Of course, many markets lie between the extremes.'*

53. In particular, Klemperer¹⁸ argues that when contracts are large and specialised, it is likely that there will be lock-in effects or that entry will not be easy. He provides the following example:

*'For example, after being the winner among eight bidders of the contest for the seven-year monopoly franchise to run the UK National Lottery when it was founded in 1994, Camelot had developed substantial learning-by-doing and reputation advantages by the time of the subsequent contest in 2000. Not surprisingly there was far less competition (just two bids) in the second contest.'*¹⁹

54. Klemperer²⁰ goes on to say that:

'Arguably the surprise was that there was a second bidder at all.'

55. Of course, if the extent of incumbent advantage is such that there is no prospect of competition when the licence is re-auctioned in the future, then a merger between the winner and a previous runner-up is unlikely to have an impact on competition. The reason is that the runner-up would not be a serious contender for the licence, and may not even participate in the auction, in the absence of a merger. Moreover, it would be unwise for the seller to rely on the runner-up to ensure that enough revenue is raised in the auction.

¹⁸ Klemperer (2007, op. cit.).

¹⁹ Klemperer (2007, op. cit., pp. 10-11).

²⁰ Klemperer (2007, op. cit. p. 11, footnote 25).

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Instead, in this instance, the re-auctioning will likely become a negotiation between the seller and the incumbent that may assign a higher value for the licence under the merger.

Alternatively, the seller can pursue a range of options to promote entry and reduce any incumbency advantage, as I will discuss further in paragraphs 73 to 77, 162 to 181, 210 and 227 to 232.

56. Whether particular bidding markets, for example the bidding markets for lotteries, Keno and wagering across different Australian jurisdictions, satisfy the requirements for a stylised 'ideal' bidding (where a merger does not have unilateral effects) can be assessed by applying the conceptual framework developed above to the facts of the case. I will return to this issue in paragraphs 88 to 94 (general material), 131 to 139 (in relation to Keno), 149 to 160 (in relation to lotteries), 195, 200-204 and 219-226 (in relation to wagering) below.

Unilateral Effects when the seller is strategic

57. I now consider the case where a merger involving the runner-up and the winner of previous auctions may give rise to anticompetitive effects. In particular, I consider a merger that generates synergies in a context where the seller uses an optimal auction.
58. Auction theory has established that the optimal auction can be implemented, for example, by using a standard auction, such as a first-price sealed-bid auction, with an optimally chosen reserve price.²¹ Under a reserve price, the object is sold to the highest bidder if the highest bid is above the reserve; otherwise, the object is retained by the seller.

²¹ For a formal, mathematical analysis, see for example Menezes and Monteiro (2008, op. cit., pp. 82-85)

The role of reserve prices

59. Publicly announced reserve prices²² play two different, but related roles in auction design.

First, they ensure that, in the absence of competition or in the presence of collusion, the final price, if there is a sale, is at or above the seller's value.

60. A reserve price will determine the auction price only when there is a single bidder with value above the reserve. This bidder does not need to bid above the reserve to secure the object.

If two or more bidders value the object above the reserve, competition will drive the auction price above the reserve. That is, the reserve price is not binding in the presence of sufficient competition.

61. Second, a higher reserve price can lead to higher auction revenue. To see this, consider two reserve prices, R_1 and R_2 , with R_1 smaller than R_2 . By setting a reserve price of R_2 , potential buyers with values between R_1 and R_2 will not bid in the auction. However, those who do bid, will likely bid more aggressively than in the case of a reserve price of R_1 . This is because they know that those who bid will have values greater than R_2 . More aggressive bidding can lead to higher revenue for the seller.

62. Ultimately, the extent of the positive impact on revenue will depend on a number of factors. These include the trade-off between more aggressive bidding and the lower number of actual bidders that result from a setting a high reserve, and the risk that no potential buyers would be willing to bid above the high reserve.

²² In general, publicly announcing the reserve price encourages participation by serious bids and leads to better informed decision making by firms. There are instances where the seller may benefit from keeping the reserve price secret. This includes, for example, when the seller is not able to credibly announce a reserve price (see, for example, Horstmann, I. J. and LaCasse, C. (1997), 'Secret Reserve Prices in a Bidding Model with a Resale Option,' *American Economic Review* 87(4): 663-84) or when bidders are risk averse (see, for example, Li, H. and Tan, G. (2000), 'Hidden reserve prices with risk averse bidders,' mimeo, Penn State University, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.630.5577&rep=rep1&type=pdf>).

63. Moreover, as the optimal reserve price is above the seller's valuation, then the higher expected revenue might be achieved at a potential loss of efficiency. This follows because there is a risk that there will be no bidders with values above the higher reserve, and so the object is retained by the seller, but there are bidders with values that exceed the seller's valuation.

The optimal auction

64. Now I consider the impact of a merger on the seller's expected revenue when the seller uses an optimal auction. I examine a special case where bidders' valuations are ex-ante symmetric and can be seen as determined by a random, independent draw from a fixed probability distribution. Under this assumption, bidders are identical from an ex-ante perspective; that is, prior to knowing their valuation.

65. I also assume the seller is risk-neutral,²³ an assumption that is commonly made when the government is the seller.²⁴ In this setting, there is a well-known result in auction theory that establishes that the optimal reserve price is independent of the number of bidders.²⁵ While this result is technical in nature, I will explain it through an analogy with standard monopoly theory.

²³ A risk-neutral agent is indifferent between a lottery that yields a monetary outcome $pX + (1 - p)Y$ with certainty where p is a probability and X and Y dollar amounts, over a lottery that yields X with probability p and Y with probability $1-p$. See, for example, Mas-Colell, A., Green, J., and Whinston, M. (1995), *Microeconomic Theory*, Oxford University Press, pp. 167-208. This means that a risk averse agent is not willing to accept a fair bet.

²⁴ For example, in the context of public evaluation of projects, see Arrow, K. and Lind, R. (1970, 'Uncertainty and the Evaluation of Public Investment Decisions', *American Economic Review*, Vol. 60, pp. 364-378. Available at [http://user.iiasa.ac.at/~hochrain/KIT%202016%20Material/Thema%201%20Arrow%20Lind%20Theorem%20\(S%20ection%202\).pdf](http://user.iiasa.ac.at/~hochrain/KIT%202016%20Material/Thema%201%20Arrow%20Lind%20Theorem%20(S%20ection%202).pdf).

²⁵ In general, if bidder's values are not ex-ante symmetric, then the optimal auction involves setting one reserve price for each bidder. See, for example, Menezes and Monteiro (2008, op. cit., p. 82).

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66. In a standard monopoly problem, the profit maximising price is established by equating marginal cost – the cost of producing an additional unit – with marginal revenue – the extra revenue from selling an additional unit.
67. In an auction in which the seller has one object for sale, analogously to the standard monopoly problem, the seller chooses a price so that the marginal cost (the value to the seller of retaining the object) is equal to the marginal revenue (the additional revenue that it can earn by raising the reserve price slightly). This price does not depend on the number of bidders as it is derived as if the seller is facing a single buyer. The seller sets a reserve price for each buyer – in the same vein as a standard monopolist that can price discriminate. However, as bidders are assumed to be ex-ante symmetric, the price is the same for all bidders.
68. It follows that in the absence of synergies, a merger between the bidders that are expected to have the highest and second highest values²⁶ unambiguously reduces the seller's expected revenue. The reason is that the optimal reserve does not change, but there is a reduction in the number of bidders, which would lead to a lower expected price, reflecting a reduction in competition, and the removal of the second highest valued bidder through the merger.
69. The presence of synergies, however, has an impact on the optimal reserve price. As the two bidders merge into a bidder with a higher value for a licence – for example, a bidder with a value equal to the maximum value amongst the two bidders plus the value of the synergies, the optimal reserve will rise. To use the analogy to the standard monopolist, the monopoly price increases as the buyer's willingness to pay rises.

²⁶ This assumes that there are incumbency advantages and that entry is difficult. As we have seen in paragraphs 48 to 56, in the absence of incumbency advantages, and if entry is easy, then removing a bidder through a merger may have no impact on auction prices, as existing or new bidders may constrain the ability of the merged entity to affect auction prices.

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70. In this context, there are two opposing effects. A reduction in the number of bidders decreases competition and, as a result, the expected revenue of the seller. However, the existence of synergies increases the optimal reserve price and, therefore, the expected revenue of the seller. The reason is that the optimal reserve price is related to the expected value for the buyers, which increases with synergies.
71. The expected final impact of the merger, from these opposing forces, on the expected revenue of the seller will depend on a number of factors, including the distribution of the values that potential bidders assign to the object, and the extent of the synergies. This result is established formally by Gagnepain and Martimort.²⁷
72. To be clear, I have provided a mechanism through which a merger between the winner and the runner up of previous auctions can lead to an increase, rather than a decrease, in the seller's expected revenue. The analysis of course only shows that it is possible, under certain circumstances, for the seller to benefit from such a merger. In particular, for this to happen, it requires the seller to strategically change the reserve price as a response to the merger.

Other strategies for sellers

73. In addition to setting a reserve price optimally, a strategic seller – a seller that designs the auction rules, including the reserve price, to maximise their expected revenue from the auction or to achieve another specific objective such as economic efficiency – has a number of options to promote competition in the auction and, by doing so, increase their expected revenue. For example, the seller of a lottery licence may decide to sell more than one licence, or to sell an exclusive licence for a period that is sufficiently long to attract new entry. If the costs of entry are fixed, the larger the value of the object for sale, the more likely it is that bidders other than the incumbent will be willing to incur the fixed entry costs.

²⁷ Gagnepain, P. and D. Martimort (2016), 'Merger Guidelines for Bidding Markets,' *Revue économique* 67, pp. 69-78. A working paper version is available at <https://hal-paris1.archives-ouvertes.fr/hal-01314036/document>.

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74. A strategic seller can also choose the format of the auction to encourage entry. For example, in the case where there is a stronger bidder, such as an incumbent, simultaneous sale processes encourage entry. To see this, consider any sequential or dynamic auction where bidders have an opportunity to revise their bids in response to the bids of their competitors. The English auction is an example of a dynamic auction. A weaker bidder (that is, a bidder that does not have an incumbency advantage) knows that they cannot win the auction as the incumbent can outbid them. Such a bidder is unlikely to enter the auction, especially if it is costly to bid.
75. Consider now a simultaneous auction, where bidders do not observe the bids of other bidders. A standard first-price sealed-auction is an example of a simultaneous auction. In this instance, as explained above, theory predicts that the incumbent will shade their bid; that is, they will bid their estimate of the value of the second highest bidder. A non-incumbent now has a chance of winning the auction, as they may have a value larger than the incumbent's estimate, and are more likely to enter the auction. The difference is that the dynamic auction reveals additional information about bidders' values, whereas the simultaneous auction does not reveal this information and this encourages weaker bidders to enter.
76. Other strategies include making the number of potential bidders as large as possible, for example by reducing regulatory barriers and allowing foreign bidders, and providing detailed information about the object for sale so that potential entrants can derive more accurate estimates about the value of the object for sale.
77. A strategic seller can also re-auction the licence or threaten to re-auction the licence if not satisfied with the outcome of the bidding process.

When are sellers strategic?

78. Klemperer (2007) questioned whether sellers (especially government agencies) have the ability or capacity to set the rules and procedures of the auction to overcome anticompetitive issues:

(a) ‘...if the bid-taker cannot commit to its future behavior, or is susceptible to lobbying, that can undermine its power. Moreover, the bid-taker is often severely restricted by legal and political constraints, or its own organizational structure. (This restriction is particularly likely if the bid-taker is a government agency.)’²⁸

79. The ability of the seller to design effective auction rules is indeed relevant, and becomes more important in achieving a competitive outcome if there is less competition in the bidding in the factual compared with the counterfactual.

80. Klemperer’s concerns about the ability of government agencies to pursue an effective auction design may hold true under some circumstances. For example, when government agencies or local governments lack experience in using tenders and auctions to allocate licences or procure goods or services, or are too small or under-resourced to engage the expertise that may be necessary to develop and implement effective auctions and tenders. However, my own professional experience suggests that such concerns do not always hold, and in particular, do not hold for Australian states and territories.

81. I have considerable experience providing advice to governments (and private parties) over the last twenty years precisely on how to design auctions to achieve particular goals, including revenue maximisation. For example, this experience includes reviewing the auction system that was used until recently for allocating timber logs from Victoria’s publicly owned

²⁸ Klemperer (2007, op. cit., p. 3).

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forests. I found that, although there were shortcomings, the evidence that the auction system produced superior outcomes to the system of administered allocation and pricing was overwhelming. Prices reflected bidders' preferences (controlling for auction characteristics), prices were higher in the auctions compared to other administrative allocation mechanisms (controlling for timber characteristics) and auctions and supporting systems and procedures were successful in attracting bidders and facilitating competition.²⁹ This suggests that State governments can be considered as strategic sellers. I will return to this issue when applying the conceptual framework developed in this section to assess the competitive and total welfare impacts of the merger on auctions of Keno, lottery, and retail wagering licences.

82. Moreover, Klemperer himself has designed two very high profile auctions, the UK 3G auctions and the mix product auctions used by the Bank of England to buy loans backed by financial collateral of varying quality in the wake of the global financial crisis. These two auctions are considered to have exceeded expectations in terms of achieving government objectives.³⁰ Klemperer recognises that it is possible to design an auction to overcome anticompetitive issues, *'but it is often unrealistic to expect this to be achieved in practice'*.³¹

83. Ultimately, whether it is realistic for sellers, and in particular governments, to be strategic has to be assessed in the context where the question arises. I note, however, that the tender process for the licence to operate the single National Lottery in the United Kingdom demonstrates that the seller can structure the conditions of the tender to help ensure effective competitive pressure in the bidding process.³² In this respect the National Lottery

²⁹ See VicForests, Sustainability Report (2008), p. 28, available at <http://www.vicforests.com.au/static/uploads/files/sustainability-report-2008-wfwzijvaqeib.pdf>

³⁰ Various press articles on these two auctions are available at <http://www.paulklemperer.org/>.

³¹ Klemperer (2007, op. cit., p. 3).

³² National Lottery Commission (2008), 'Creating a Lottery for the future: An overview of the Third Licence Competition', April, available at <http://www.natlotcomm.gov.uk/PDF/NL-licences/Creating-a-Lottery-for-the-future-An-overview-of-the-Third-Licence-Competition.pdf>, see especially pp. 4-6.

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Commission, which is responsible for selecting the licence holder and monitoring its operations, undertook extensive research and consultation to develop a competition structure which was set out in the Invitation to Apply.

84. Key elements of the competition structure, implemented by the National Lottery

Commission, included: a single stage sales process with no pre-registration of interest to create uncertainty amongst bidders in relation to how many competitors they would face and their characteristics; a simultaneous bidding auction that provided bidders with no opportunity to revise their bids as result of the bids made by others and, as a result, provide the incentives for bidders to make their most competitive offer possible; and evaluation criteria that helped to lower barriers to entry.

85. The evaluation criteria entailed bidders demonstrating that they could meet required standards of performance (“hurdles”). This approach lowers barrier to entry as it does not matter how well qualified bidders have satisfied the ‘hurdles.’ A second part of the evaluation involved price competition. The Commission also made a wide range of information available on the lottery opportunity and on a number of key handover issues that would be relevant in the event that the incumbent did not win the competition.

86. In paragraphs 175-181, 210 and 228 I will assess whether sellers can be strategic in the context of the auctioning of Keno, lottery and wagering licences by state and territory governments in Australia.

87. In the remainder of this report, I examine the proposed merger in the light of the conceptual framework developed above.

THE ASSESSMENT OF THE IMPACT OF THE PROPOSED MERGER ON BIDDING MARKETS

88. In this Section I first briefly summarise the nature and extent of the synergies that have been provided to me as assumptions. Second, I explain why in my view it is appropriate to focus on separate future auctions for Keno, Lotteries and wagering licences within a timeframe in which it is reasonable to assume that current market conditions, which underpin considerations of who are the likely highest and second highest value bidders, will continue to prevail.
89. I follow the same approach in assessing the impact of the merger in each of auctions or sale processes under consideration. I examine whether the conditions for a stylized bidding market are satisfied. Two of the conditions (infrequent sales and 'winner take all') are clearly satisfied across all auctions. Thus, I focus on whether there are incumbency advantages and, when appropriate, whether entry barriers are material in the context considered.
90. The existence of incumbency advantages makes it more likely that the winners of previous auctions will be the highest value bidders in future auctions. In this instance, removing a bidder who is likely to be the second highest value bidder in future auctions can impact on future auction prices.
91. In contrast, if there are no incumbency advantages, there may not be any particular reasons to expect that the incumbent will be the highest value bidder in future auctions. In such a case, a merger between previous highest and second highest value bidders is not expected to result in future auction price decreases. The reason is that there are other bidders who are as likely as the merged entity to win (or be the runner up) in future auctions.
92. In a similar vein, if entry is easy, a merger cannot have an impact on future auction prices. This follows as new bidders, who have not participated in previous auctions, may be able to

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outbid the merged entity in future auctions. That is, if there are no substantive barriers to entry, there are no particular reasons to assume that the merged entity will win future auctions, as it can be displaced by new entrants.

93. If the conditions for a stylised ideal bidding market do not hold, then I consider whether the merger can impact on future auction prices. To do so, I examine the previous bidding history, and other available information, to determine whether the merger will remove a bidder from the market who would likely impact on future auction prices. If this is the case, I will then consider what a strategic seller can do to counter any potential negative impact on future auction prices following from the merger. Finally, I assess whether the seller, the government of the jurisdiction allocating the licence, may be regarded as a strategic seller.
94. Before I assess the impact of the merger on specific bidding markets, I explain why I focus on the potential for the merger to result in lower future prices, and the conditions under which total welfare can decrease on the assumption that the total welfare standard puts more weight on the impact on the seller's future auction prices, than on the benefits to shareholders in the form of higher profits.

The nature of synergies

95. I have been provided with assumptions about the merger that include estimates of the various synergies that are expected should the merger occur. There are cost and capital expenditure synergies and revenue synergies. Some of the synergies would be reflected in higher profits for the merged entity and some would be reflected in increased returns to consumers, industry and the government.
96. Given that the focus of my analysis is on the welfare impact of the merger on future auctions or sale processes for different licences, I only consider synergies that will increase the net

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value that the merged entity assigns to licences that will be auctioned off within the timeframe of my analysis. While there are estimated benefits to consumers, industry and government resulting from the merger, these benefits are simply transfers, from one entity or group to another, from the viewpoint of the analysis of the impact of the merger on the markets for licences of Keno, wagering and lotteries. To put it differently, one could add these benefits to the value that the merged entity assigns to particular licences and subtract them as payments or benefits to consumers, industry and government. Thus, these transfers have no net welfare effect.³³

97. The estimated cost and capital expenditure synergies comprise: substantial ongoing annual cost synergies in relation to wagering, technology, corporate and procurement and other areas (property and field services) as well as significant capital expenditure savings. The merged firm's post-racing industry share of these annual synergies would be **[Confidential to Tabcorp]** [REDACTED], realised in full in the third year following the proposed merger.³⁴

98. **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³⁵ **[Confidential to Tabcorp]** [REDACTED]
[REDACTED].³⁶

99. In my view, the estimated reduction in fixed and variable costs will result in an increased willingness to pay for particular licences by the merged entity in the factual, vis-à-vis the

³³ As discussed before, an analysis focusing on the provision of these services, rather than on the licences, may consider the impact of the merger on the total welfare of punters, and the benefits associated with increased industry funding or government tax revenue.

³⁴ Assumptions for Flavio Menezes, paras. 229-231 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

³⁵ Assumptions for Flavio Menezes, para. 232 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

³⁶ Assumptions for Flavio Menezes, para. 234 (**Tab 1 of FXM-2 [TBP.001.027.1907X]**).

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willingness to pay of Tatts and Tabcorp. This follows as the merged entity will allocate some of this reduction in fixed costs to particular operations, and its variable costs will be lower, resulting in an increase in the merged entity's net value for the licences in the factual.

100. [Confidential to Tabcorp] [REDACTED]
[REDACTED]³⁷ [Confidential to Tabcorp]
[REDACTED]
[REDACTED]
[REDACTED];³⁸ and [Confidential to Tabcorp] [REDACTED]
[REDACTED]³⁹ The revenue synergies are expected to be realised by the third year from the proposed merger, and [Confidential to Tabcorp] [REDACTED] of the total wagering revenue synergies are expected to flow through to the racing industries, hospitality industries and governments as industry payments, fees, and taxes including corporate income tax.⁴⁰

101. Some of these benefits may arise from improvements in Tatt's existing operations in jurisdictions where licences will not be up for renewal within the timeframe of my analysis. Such benefits may have no impact on the merged entity's willingness to pay for other licences to be auctioned off within the timeframe of my analysis (vis-à-vis the willingness to pay of Tatts and Tabcorp for the same licences in the counterfactual within the same timeframe).

102. Some of these benefits may also become available if Tabcorp were to win future auctions and replace Tatts as a licence holder. In this case, it would not be appropriate to consider such benefits as an increase in the merged entity's willingness to pay. The extent

³⁷ Assumptions for Flavio Menezes, paras. 236-238 (Tab 1 of FXM-2 [TBP.001.027.1907]).

³⁸ Assumptions for Flavio Menezes, paras. 239-244 (Tab 1 of FXM-2 [TBP.001.027.1907]).

³⁹ Assumptions for Flavio Menezes, paras. 246-250 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁴⁰ Assumptions for Flavio Menezes, para. 251 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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to which such benefits would result in an increase in the merged entity's net value for a licence in the factual will depend on the likelihood that Tabcorp would win a particular licence in the counterfactual. For example, if Tabcorp had a low probability of winning the auction, then these benefits would only be realised if the merger were to proceed.

103. In addition, if the merger led to a merger of totalisator pools, this would generate additional revenue for the merged firm and be more attractive to punters as a deeper more liquid pool can support the payment of higher dividends. This would likely result in an increase in the willingness to pay for a future wagering licence in the factual, as absent the merger, it would be less likely for Tabcorp and Tatts to consolidate their pools.⁴¹

104. In summary, there are cost savings that are common across the operation of activities linked to the Keno, wagering and Lottery licences, and potential revenue synergies that are specific to particular types of licences. I consider it likely that these reduced costs will be reflected in a higher willingness to pay by the merged entity in future auctions under the factual, compared with the maximum willingness to pay by either Tabcorp or Tatts under the counterfactual. It is less clear, however, the extent to which revenue synergies will result in an increase in the willingness to pay by the merged entity as some of the benefits are specific to operations in jurisdictions where licences will not go up for sale within the timeframe of my analysis and some benefits may be available to Tabcorp if they were to win the licence through a competitive process in the counterfactual.

105. I also note that any increased willingness to pay by the merged entity may not result in higher auction prices under the factual compared with the counterfactual, if there is a reduction in the number of competitors, which could lead to an offsetting influence. The impact on auction prices will depend on a number of factors including whether the merger has removed a bidder that could potentially be influential in the determination of the

⁴¹ Assumptions for Flavio Menezes, para. 253 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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auction price, and whether the seller behaves strategically to take advantage of the emergence of a higher valuation bidder.

The future sales of individual licences are the object of the economic analysis of the merger on total welfare

106. When assessing the impact of the merger on total welfare, and in particular on the revenue that governments can raise through the future sale of licences, I consider each auction or allocation event individually. I note that while some jurisdictions may choose to auction off their licences, others may decide to renegotiate an existing licence with the licence holder rather than to use competition to re-allocate the licence. The economic analysis in both cases involves examining the impact of the removal of a potential bidder from the market on the auction price or on the outside option for the government if it decides to renegotiate the licence with the incumbent.
107. There are at least two reasons to focus on the individual allocation of a particular licence as the object of the economic analysis rather than, for example, focus on the impact of the merger on all future allocations of licences for a particular activity together. First, each licence to be allocated through an auction (or through renegotiation) entails a specific set of rights and obligations related to a particular activity (Keno, wagering or lottery) in a given jurisdiction. Thus, from the viewpoint of the seller, there is no substitutability across products, activities or jurisdictions.
108. Second, in principle there could be some substitutability amongst licences for particular activities across different jurisdictions from the demand side. For example, a prospective buyer could consider the Keno licence in Victoria as a substitute for the Keno licence in New South Wales. However, the infrequency of the auctions and the different

characteristics of the licences⁴² imply that in practice substitutability may be highly limited. Moreover, the consideration of which bidders may be the highest and second highest value bidders, which is central to the analysis of the impact of the merger on auction prices, may also change across allocation events.

The timeframe of my analysis

109. The analysis of the impact of the proposed merger on future auctions requires ascertaining whether the merging parties are likely to be the highest and second highest value bidders in these future sale processes. As the expiry dates of the licences under consideration vary from 2018 to beyond 2060, a question arises regarding an appropriate timeframe in which it is reasonable to assume that current market conditions, which underpin considerations of who are the likely highest and second highest value bidders, will continue to prevail.

110. To determine an appropriate timeframe for my analysis, I consider it relevant to review industry trends across the three types of licences. Wagering trends over the past decade are described at **Tab 1 of FXM-2 [TBP.001.027.1907]** (Section B7) and summarised in paragraph 195. For example, Australian totalisator turnover has decreased from approximately 70% of total wagering turnover in 2006 to approximately 35% of total wagering turnover in 2015 and **[Confidential to Tabcorp]** [REDACTED]. In contrast, fixed odds racing and sports turnover has increased from approximately 30% of total wagering turnover to 63% of total wagering turnover over the same period, and **[Confidential to Tabcorp]** [REDACTED]. During the same period from 2006 to 2015, the

⁴² See Table 1, Table 2, and Table 3 for a description of some of the licence characteristics and taxation regimes across different jurisdictions for Keno, lotteries and wagering licences, respectively.

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turnover of corporate bookmakers has increased from approximately \$2.6 billion to \$12.3 billion.

111. I also consider that the emergence of online competition will continue to impact on the potential value of lottery and Keno licences. **[HIGHLY Confidential to Tatts]** [REDACTED]

[REDACTED]

[REDACTED].⁴³ A

similar argument about the relevance of online competition can be made in the case of Keno, with the emergence of online providers of derivative Keno products such as Lottoland.⁴⁴

112. The market trends described above, which include a reduction in the relative importance of totalisator betting with respect to fixed odds betting, the decrease in the relevance of physical retail outlets, the increased market presence of corporate bookmakers and the emergence of online resellers of lotteries and sellers of lottery and keno derivatives, all point to significant changes that will make it difficult, if not impossible, to identify the potential first and second high value bidders beyond a certain time horizon. Moreover, any current assessment of the impact of a merger on future auction prices needs to be adjusted to account for the relevant time discount rate.

113. For the reasons outlined in the above paragraph, I will not assess the impact of the merger on auctions or allocation events that will take place beyond 2024. I note that the next allocation event after 2024 is not until 2033. The trends in wagering described above, and the emergence of online competition in lotteries and Keno, suggest that any attempts of making inferences about the likelihood of Tatts or Tabcorp being the highest or second

⁴³ Assumptions for Flavio Menezes, para. 184 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁴⁴ Assumptions for Flavio Menezes, para. 205 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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highest value bidders in a counterfactual auction to take place in 2033 will in my view amount to speculation.

114. In contrast, I consider the focus on pre-2024 sale events appropriate. While market trends and other events point towards evolving market dynamics, it is reasonable in my view to use current market conditions to determine whether Tatts and Tabcorp are likely to be the highest value bidders in counterfactual auctions taking place over the next 7 years.

Focus on potential for future auction prices to be lower under the factual than under the counterfactual

115. As I have explained in paragraph 34, unweighted total welfare cannot decrease as a result of a merger that generates synergies. The underlying assumption is that the value of the object for sale is the maximum amongst the two merging bidders plus the synergies. Thus, in the particular case where the merger involves the highest and second highest bidders in a future auction, the merger will strictly increase total welfare.

116. It follows that for a merger involving synergies to be viewed as relevantly decreasing welfare, the measure of total welfare needs to assign a lower weight to the impact on the profits of the merged entity than to the revenue for the seller of the licence, and the future auction price has to decline sufficiently. Note also that it is possible for the auction price to decline, but the weighted average of the value to the seller and the auction price to increase, as the overall impact depends on both the price decline and the weights applied to the winner's profits and to the auction revenue.

117. In the context of the proposed merger, the synergies will manifest themselves in an increase in the value that the merged entity assigns to securing a particular licence. In what follows, I explain these concepts through an example focusing on an auction for a Keno

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licence. Schedule 1 contains the detailed worked example, whereas below I present the gist of the example.

118. I assume that under the counterfactual the value of the licence to Tabcorp is equal to V_{Tab} , and the value of the licence to Tatts equal to V_{Tatts} . For illustrative purposes only, I assume that V_{Tab} is larger than V_{Tatts} . The dollar value of the synergies is equal to S , and therefore value that the merged entity assigns to the Keno licence is equal to $V_M = V_{Tab} + S$.

119. Suppose that, in addition to Tabcorp and Tatts, there are N other bidders who will bid for the licence. I assume that the merger does not change the values that these bidders assign to the licence or their decision to bid and denote the highest value amongst these N bidders as V_N^* . I also assume that the seller has no intrinsic value for the licence and that V_{Tab} is larger than V_N^* .

120. It follows that the value of unweighted total welfare is equal to V_{Tab} in the counterfactual and equal to $V_{Tab} + S$ in the factual. Recall that the value of unweighted total welfare is simply equal to the value of the licence to the highest value bidder. Thus, unweighted total welfare strictly increases in the merger in such a case.

121. I now consider a total welfare function where δ is the weight given to the winner's profits, the weight given to the seller's surplus is equal to one, V is the value of the licence to the highest bidder, and P the auction price. If $\delta = 1$, then the winner's surplus receives the same weight as the seller's surplus, and total welfare is equal to V .

122. The relevant case to examine in this example is when the merged entity is the highest value bidder in the factual. I then consider two possible counterfactuals: (i) where the bidder with the value V_N^* is the second highest value bidder; and (ii) where Tatts is the second highest value bidder. Again for illustrative purposes, I assume that the auction price

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is equal to the value of the second highest bidder; more generally, the auction price is constrained or influenced by such a value. Thus, the auction price in the factual is equal to V_N^* , the auction price under counterfactual (i) is also equal to V_N^* , and under counterfactual (ii) is equal to V_{Tatts} .

123. I can then compare the change in welfare between the factual and the two counterfactuals as follows:

- (a) Under counterfactual (i), the auction price does not change vis-à-vis the factual, and therefore there is an increase in total welfare as a result of the synergies; and
- (b) Under counterfactual (ii), the price decreases vis-à-vis the factual, and thus weighted total welfare can decrease. I show at Schedule 1 that total weighted welfare can decrease if:

$$(1) S < \frac{(1-\delta)}{\delta} (V_{Tatts} - V_N^*).$$

That is, when Tatts is the second highest value bidder in the counterfactual, and the merged entity the highest value bidder in the factual, total welfare is more likely to decrease the lower is the weight on the winner's surplus (δ), the smaller the synergies (S), and the higher is the difference between the second highest value in the counterfactual (Tatts) and the highest value amongst other bidders ($V_{Tatts} - V_N^*$).

124. The example above, while illustrative in nature, provides the conceptual basis for focusing on the case where the merged entities are the highest and second highest valuation bidders in the counterfactual. This is the only instance where weighted total welfare can decrease in a merger involving synergies.

125. It should be clear, however, that a price decrease under the merger is a necessary, not sufficient, condition for a decrease in welfare; and other factors, including the size of the

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synergies and the weight that the total welfare allocates to the winner's surplus, will also be important. Moreover, as I will discuss further in the case of each of the sale processes, even when the merger removes a bidder that would set the auction price in the counterfactual, it is possible that the price may increase in the factual if the seller is strategic.

Impact of the merger on future auctions for Keno Licences

126. Keno is a game of chance in which 20 numbers are randomly drawn (generally electronically) from 80 numbers that are numbered from 1 to 80. Unlike lotteries (which have daily or weekly draws), Keno games are typically run every three to four minutes.⁴⁵

127. Unlike wagering, where there are dedicated retail spaces at which the service is provided (such as TAB agencies), Keno does not have dedicated retail spaces and instead is played in casinos, clubs, hotels, TABs and retail venues across Australia under agency arrangements, and (uniquely in South Australia) in newsagencies.⁴⁶

128. The table below summarises the suppliers of Keno products in Australia and the current licensing arrangements:

Table 1: Keno licences, taxation and available information on allocations by State and Territory.

State	Licensee	Duration	Taxation arrangement	Previous and prospective allocations
ACT	Tabcorp	Expires 2064	4.54% of turnover	
NSW	Tabcorp / ClubKeno Holdings Pty (joint licensees)	2050	18% of gross revenue or 24% of player loss (depending on total player loss)	The New South Wales licence was re-negotiated 6 years prior to the end date of the original licence

⁴⁵ Assumptions for Flavio Menezes, paras. 185-187 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁴⁶ Assumptions for Flavio Menezes, para. 190 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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Northern Territory	Skycity and Lasseters	Skycity (until 2031) Lasseters (until 2031)		
Queensland	Tabcorp	2047	29.4% of gross revenue	
South Australia	Tatts (SA Lotteries)	Tatts has exclusive Master Agency rights of SA Lotteries until 2052		
Tasmania	Federal Group	2023		
Victoria	Tabcorp; Tatts has a licence to conduct a daily draw keno game but has not launched or offered any keno under that licence	Tapcorp – 2022 Tatts - 2018	33.33% of player loss subject to a minimum player return of 75%.	The Victorian Keno licence expires in 2022, but it is not yet known whether the Victorian government will re-allocate the licence through an auction.
Western Australia	Crown Perth	Operates in casino only		

Source: Assumptions for Flavio Menezes, paras. 194, 222-224 (**Tab 1 of FXM-2 [TBP.001.027.1907]**), and for taxation Australasian Gaming Council, “A Guide to Australasia’s Gambling Industries, Facts, Figures and Statistics”, Chapter Five, Gambling Taxation in Australia, 2015-16, p. 16.

129. Tabcorp’s Keno products are distributed in approximately 3,579 pubs, clubs, hotels and TABs in Victoria, New South Wales, Queensland and the ACT.⁴⁷ Tabcorp has also introduced jackpot pooling,⁴⁸ which enables larger, and faster accruing, jackpots to be offered. The Keno jackpot is pooled across NSW, Victoria and the ACT.⁴⁹ Tatts’ Keno products in South Australia are distributed through TAB outlets, newsagents, and pubs and clubs.⁵⁰

Tatts has also held the right to offer daily Keno in Victoria under its Category 1 Public Lottery

⁴⁷ Assumptions for Flavio Menezes, para. 195 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

⁴⁸ Assumptions for Flavio Menezes, para. 196 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

⁴⁹ Assumptions for Flavio Menezes, para. 196 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

⁵⁰ Assumptions for Flavio Menezes, para. 202 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

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Licence since 2015. However, Tatts has not exercised this right.⁵¹ Lottoland, an online provider (see Paragraph 139), offers derivative Keno products in which customers bet on the outcome of KeNow and German Keno.⁵²

130. There are two licences that expire in the medium term; for Victoria in 2022, where Tabcorp is the incumbent, and Tasmania in 2023, where the Federal Group is the incumbent. The first step in my analysis is to consider whether there are incumbency advantages such that winning previous auctions or owning licences in other jurisdictions may impact on future auctions by creating an asymmetry between bidders. If such advantages exist then removing an existing licence holder from these future auctions may have an impact on prices for the licences.

131. I consider that there are no significant incumbency advantages that will impact the 2022 Victorian and 2023 Tasmanian licence allocations. First, it is my understanding, based on my general knowledge, that Keno is a game of chance that can be implemented in a number of ways, from pen and paper for number selection by players and drawing numbers with a ball machine similar to ones used for lotteries and bingo, to a full electronic implementation. There are also derivative products. Thus, I consider it to be unlikely that the owners of current licences will have a superior technology or process that will afford them an advantage against other potential bidders.

132. Second, the game of Keno is conducted at third party venues and, thus, ownership of a licence does not entail Keno-specific venue investments that may not be easily transferable at the licence expiry. For example, if a new operator is awarded the Victorian licence in 2022, I expect that the new operator would be able to secure the same venues of the incumbent operator with similar conditions. The reason is that in the absence of

⁵¹ Assumptions for Flavio Menezes, para. 203 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁵² Assumptions for Flavio Menezes, para. 205 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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incumbency advantages, the underlying economics of the operation will not depend on who owns the licence.

133. There are, however, two potential sources of incumbency advantages. Owning existing licences may allow the licence holder to jackpot pool as introduced by Tabcorp. I note, however, that pooling may be achieved by commercial agreements, rather than through the acquisition of licences. Moreover, current licence holders, other than Tabcorp or Tatts, may also be able to benefit from an increased ability to jackpot pool by acquiring the Victorian and/or Tasmanian Keno licences.

134. The extent to which incumbents, including Tabcorp and Tatts, may have invested in online platforms and developed customer databases,⁵³ offers another potential incumbency advantage. Existing online platforms may disadvantage new operators who may need to develop their own, and to secure new online customers, leading to higher cost, and therefore a reduced ability to compete for the licences.

135. As with pooling, if there is an advantage, it would benefit all existing licence holders, and not exclusively Tabcorp and Tatts. In addition, as I have discussed above, there are many different ways to implement a Keno game, and so it is not clear that a particular online platform may have benefits over alternatives. Also, the magnitude of the costs of developing an online platform by potential bidders, other than incumbents, needs to be assessed against the revenue stream that can be generated from the licences.

⁵³ [Confidential to Tabcorp]

with the product being prohibited to customers in Queensland.

[Confidential to Tabcorp]

See Assumptions for Flavio Menezes, para. 199-201 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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136. In summary, I do not consider that incumbency advantages are sufficient to warrant concerns about the proposed merger. In the absence of such advantages, removing a potential bidder is unlikely to impact on the auction price.
137. Even if such incumbency advantages are more significant than what I have considered, and assuming that Tabcorp is the highest value bidder for the Victorian and Tasmanian licences, I find it unlikely that removing Tatts will have a significant impact on future auction prices for a number of reasons.
138. First, there are other existing Keno licence holders, including the Federal Group, that could also be considered as just as likely to be the second highest value bidder in the two future auctions, thereby constraining the ability of the merged entity to reduce the auction price.
139. Second, as there are no significant barriers to entry (other than holding a licence), potential bidders would also include: foreign corporations and foreign owned domestic businesses; gaming services companies such as IGT which manufactures and supplies electronic gaming machines (EGMs), and provides gaming systems and services and has established relationships with pubs and clubs; and other participants in the broader gambling industry including Lottoland, which recently entered Australia as a provider of online lottery betting services; and corporate bookmakers which also operate online.⁵⁴ Any of these bidders could in principle be the second highest value bidder for the Victorian and Tasmanian licences under the counterfactual assuming Tabcorp would be the highest value bidder.

⁵⁴ Assumptions for Flavio Menezes, para. 225 (Tab 1 of FXM-2 [TBP.001.027.1907]).

Impact of the merger on future auctions for lottery licences

140. Lotteries are a chance-based activity consisting of a player randomly picking a specific set of numbers from a larger set of numbers. The player whose selected numbers match those drawn by the lottery operator wins a prize, which is based on the total amount wagered after deducting State taxes and an approved profit margin.⁵⁵ Lottery products are not viewed by customers as gambling, and demand for these products is distinct from other games of skill and chance.⁵⁶ Lotteries are also not perceived as substitutes for Keno products. The former is typically played once a week or on a similar basis, and purchased with other goods, such as newspapers and magazines. The latter is played approximately every three minutes – and so it can be played multiple times over a period of time, it is typically offered exclusively in licensed venues, it involves a much lower prize and it is played by a much smaller fraction of the population than lotteries.⁵⁷
141. Lottery operators may also conduct ‘instant’ lotteries (‘scratch-its’). The prize pool in the instant lottery is determined by set percentages of the total value of the tickets printed for each game, with the number and value of prizes varying for each game.⁵⁸
142. Lottery products are distributed through newsagents and convenience stores.⁵⁹ Lottery tickets (excluding ‘scratch-its’) can also be purchased online.⁶⁰
143. The current holder of each exclusive lotteries licence in each State and Territory, date the licence was awarded, bidders for the licence or sale arrangements, taxation rate and the exclusivity period are summarised in Table 2 below.

⁵⁵ Assumptions for Flavio Menezes, para. 154 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁵⁶ Assumptions for Flavio Menezes, para. 160 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁵⁷ Assumptions for Flavio Menezes, para. 162 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁵⁸ Assumptions for Flavio Menezes, para. 157 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁵⁹ Assumptions for Flavio Menezes, para. 158 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁶⁰ Assumptions for Flavio Menezes, para. 159 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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144. As shown in Table 2, Tabcorp does not hold any lottery licences, and Tatts operates all public lotteries in each State and Territory except Western Australia.

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Table 2: Available information on Lottery licence details by State and Territory

State / Territory	Licensee	Award date	Number of bidders when awarded or sale arrangements	Tax rate	Exclusivity period and licence expiry
NSW	Tatts	2010	In 2010, there was a competitive tender process for the NSW public lotteries licence, and at least three bidders participated in the bidding process. Some of the bidders were international parties.	76.918% of Net Player Loss less GST.	Exclusive until 2050. Expires in 2050
Victoria	Tatts			79.4% of Net Player Loss (or 90% where no GST payable.	Exclusive until 2018, Expires in 2018.
Queensland	Tatts	2007	In 2007, Tatts (then known as Tattersalls) acquired Golden Casket which had the exclusive licence to conduct lotteries in Queensland. 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.	73.48% (55% for Instants) of monthly gross revenue less the smaller of GST and gross tax.	Since August 2016, the Queensland lottery operator's licence granted to Golden Casket is a non-exclusive licence. Expires in 2072.
South Australia	Tatts	2012		41% of net gambling revenue.	Exclusive until 2052. Expires in 2052.
Northern Territory	Tatts	2032			Non-exclusive
Tasmania	Tatts	2012	Tatts acquired Tote Tasmania in 2012.		Permits exclusive until 2018 and 2020.
ACT	Tatts			As per NSW.	[HIGHLY Confidential to Tatts] ██████████ ██████████
Western Australia	Government owned	Not applicable	Not applicable	62.5 to 67.5% of net subscriptions, as approved by the Minister.	Exclusive.

Source: Assumptions for Flavio Menezes, paras. 164-171, paras. 217-219 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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145. Tatts' lottery products are sold under a number of different brands,⁶¹ and predominantly through approximately 4,000 retail outlets (newsagents, convenience outlets, service stations, supermarkets, hypermarkets and other retailers).⁶² In the States and Territories where Tatts operates, it either has the exclusive right, or is the sole operator authorised, to provide lotteries.⁶³ Tatts' lottery websites receive approximately 3 million visitors per month across the States and Territories where it operates, and Tatts has over 2 million players registered with its lotteries business.⁶⁴
146. There are a number of other relevant businesses including Lottoland and Jumbo. Lottoland holds an NT sports bookmaker licence to operate as a 'lottery betting' operator. Lottery betting involves a customer betting on the outcome of a lottery, instead of buying a ticket for an official lottery draw.⁶⁵ Jumbo is an online lottery business that resells Tatts' lottery products through OZLotteries.com. It offers the majority of Tatts' lottery products (except Set for Life), charity lotteries and German state lotteries.⁶⁶
147. As Tasmania does not allocate lottery licences, instead relying on licencing arrangements in other jurisdictions, I focus on the impact of the proposed merger on auction prices in the future allocation of the Victorian lottery licences, which expires in 2018.
148. On 30 September 2015, the Victorian government commenced a competitive tender process to award a 10 year lotteries licence for the period after June 2018. Registrations of interest closed on 26 November 2015.⁶⁷

⁶¹ Assumptions for Flavio Menezes, para. 176 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁶² Assumptions for Flavio Menezes, para. 173 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁶³ Refer to Table 2.

⁶⁴ Assumptions for Flavio Menezes, para. 175 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁶⁵ Assumptions for Flavio Menezes, para. 178 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁶⁶ Assumptions for Flavio Menezes, para. 180 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁶⁷ See <http://www.premier.vic.gov.au/lotteries-licence-process-gets-underway/>

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149. [HIGHLY Confidential to Tabcorp] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

150. Following the general approach outlined in paragraph 89, I first consider whether the market for lottery licences can be characterised as being close to a stylised ideal bidding market. This involves assessing whether there are any significant incumbency advantages.

151. In particular, I consider three potential sources of incumbency advantage for Tatts: the ability to pool lottery revenue across different jurisdictions to offer larger jackpots, the intellectual property rights associated with lottery brands across different jurisdictions, and its customer database across States and Territories where it operates, with over 2 million registered players.⁶⁹

152. The first potential source of incumbency advantage is related to how owning licences in different jurisdictions allows Tatts to pool revenue and offer larger prizes and attract more customers. If an entrant were to win the Victorian lottery licence, they would not be able to pool revenue across other Australian jurisdictions to the same extent that Tatts does. Under the second source of incumbency advantage, the outcomes of auctions for the same jurisdiction could be linked over time, as Tatts would not face any IP transition issues. The third source of incumbency advantage arises as a new operator of the Victorian licence may need to invest in developing a customer database, unlike Tatts who has a large

⁶⁸ Assumptions for Flavio Menezes, para. 220 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁶⁹ Assumptions for Flavio Menezes, para. 175 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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number of registered customers. These sources can lead to barriers to new entrants or reduce the ability of existing competitors to outbid the incumbent in future auctions.

153. Pooling currently occurs through membership in the Australian Lotto Bloc, a jackpot pool between all the Tatts operated states and the state run Western Australian game:

*'Each state has a local lotto brand, but the tickets, prizes and results are the same across Australia. Major lotteries grouped into the "Australian Lotto Bloc" are X lotto, Ozlotto, Super 66, Lotto, Tattslotto, Monday Lotto, Wednesday Lotto, Powerball, Saturday Lotto.'*⁷⁰

154. While jackpot pooling may be a relevant mechanism to generate value, whether it provides the incumbent with an advantage will depend on a number of factors. These include the extent that pooling can be achieved via commercial agreement or through other means such as through jackpot pooling with international lotteries.⁷¹

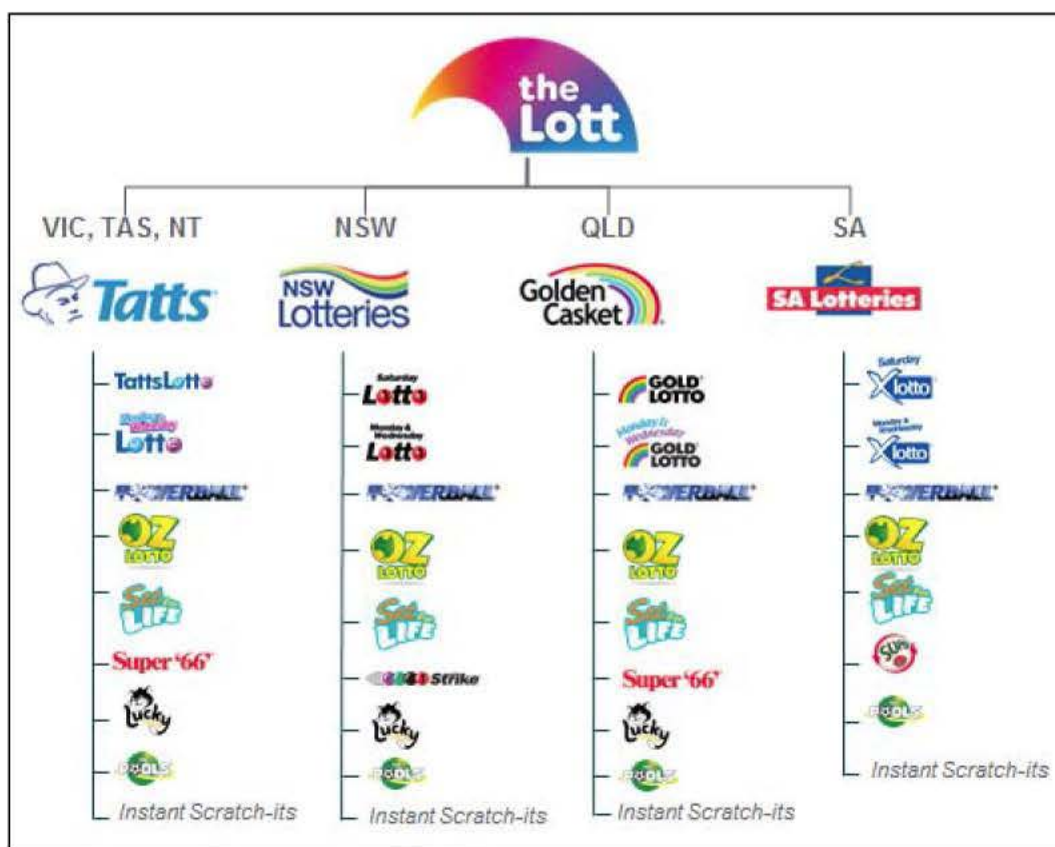
155. To assess the second potential source of incumbency, I note that there are a number of lottery brands across the different jurisdictions in which Tatts is licenced to operate, as shown in the following Figure:

⁷⁰ See <https://www.netlotto.com.au/play-australian-lotto>.

⁷¹ International pooling is extensive in Europe. See for example the case of EuroMillions (<https://www.euro-millions.com/history>).

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Figure 1: Tatt's Lottery Brands



Source: Reproduced from Assumptions for Flavio Menezes, p. 53, para. 176 (Tab 1 of FXM-2 [TBP.001.027.1907]).

156. Intellectual Property may create incumbency advantages if other bidders are not guaranteed the use of existing brands if they win the Victorian lottery licence auction. Re-branding costs, along with other capital costs such as the development of systems and hardware, could create an advantage for Tatts when rebidding for existing licences as part of the merging entity.

157. I am not able to determine whether Intellectual Property, jackpot pooling or the existence of a customer database create sufficient incumbency advantages to discourage entry of new or existing bidders in future auctions. I will proceed under the conservative assumption that there are significant incumbency advantages and assess whether the proposed merger is likely to result in lower future auction prices than in the counterfactual.

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158. As I have explained before, in the presence of incumbency advantages, the removal of the second highest value bidder from future auctions, through a merger with the highest value bidder, may result in lower future auction prices. Assuming that Tatts would be the highest value bidder in the Victorian auction in the counterfactual, the proposed merger could raise competition concerns if Tabcorp were the second highest value bidder if it had decided to participate in the auction.

159. If Tabcorp had been the runner up in previous auctions or if it already had a substantive presence in some jurisdictions, this may indicate it was likely to be the second highest bidder in the counterfactual if it had decided to participate in the auction. Tabcorp, however, does not hold any lottery businesses and I have not been provided with information that suggests that Tabcorp has been a runner up in any previous allocation event.

160. Moreover, there are number of international players with expertise in the lottery business, who may be able to overcome any incumbency advantage arising from jackpot pooling, branding and existing systems and hardware. These include for example:⁷²

- (a) Cable & Wireless, Logica CMG and India's PLAYWIN, all of whom were engaged in the bidding process for the UK National Lottery Commission's 10 year licence;
- (b) a subsidiary of the Ontario Teachers' Pension Plan (**OTPP**), which currently holds the UK National Lottery Commission licence and a licence for the Irish lottery;
- (c) IGT (International Gaming Technology), which provides online lottery transaction processing systems, and lottery management services in a number of overseas jurisdictions, and is the sole concessionaire for the Italian Lotto game;

⁷² Assumptions for Flavio Menezes, para. 221 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

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- (d) Intralot, a Greek company that supplies integrated gaming services worldwide, and operates lotteries in several overseas jurisdictions. Intralot is currently in the process of selling its Australian and New Zealand businesses, but there is nothing preventing it from participating in future lotteries licence opportunities in Australia; and
- (e) Scientific Games Corporation, which is listed on the NASDAQ Stock Exchange and is a leading provider of instant lottery products and provides lottery products and associated services around the world.

Hypothetical – Tabcorp is the second highest value bidder in counterfactual

161. I have no basis to conclude that the merger will have an impact on future auction prices as I have no basis to consider that Tabcorp would be the second highest value bidder in the counterfactual **[Highly confidential to Tabcorp]** [REDACTED]. However, for completeness, I examine the hypothetical scenario where Tabcorp would be the second highest value bidder in the counterfactual and the merged entity would be the highest value bidder in the factual. In particular, I examine whether a price decrease in this hypothetical case would be likely. For ease of exposition, I assume that there is a Bidder, who I refer to as Bidder A, who is the second highest value bidder in the factual and the third highest bidder in the counterfactual.

162. As I explained in paragraphs 73 to 77, a strategic seller has a number of options to counter any increase in market power resulting from a merger between the highest and second highest value bidders. In what follows, I discuss what these options are in the context of the Victorian lottery auction and assess whether the Victorian government can be considered as a strategic seller.

163. Setting an appropriate reserve price is an important lever for the seller in ensuring that they maximise the sales price, and this is especially the case if the seller is expected to

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face a lower number of bidders as a result of the removal of the potentially second highest value bidder. In general, it may be difficult for the seller to estimate the optimal reserve, as it depends on the distribution of possible values for the buyers. For example, in the case of oil and gas exploration licences, the government has limited information about the potential amount of oil and gas underground, or about future oil and gas prices. In the case of the sale of the spectrum of frequency for mobile telephony, the government also has limited information about the potential value that telecommunication consumers place on various services that may become available.

164. However, in the case of the lottery licences, the Victorian government has a considerable amount of information about the value of the licence for the incumbent, given the taxation regime that is based on net player losses, so that the revenues received by the incumbent can be readily estimated. The estimated synergies and business improvements for the two business, some of which may flow into the lotteries (e.g., reduction in fixed costs for the merged entity), are expected to deliver at least \$130 million of annual EBITDA, net of benefits to the racing industry. These estimates are publicly known.⁷³

165. While the incumbent's costs may not be known to the Victorian government, I consider that it is likely that they could be estimated, as the licence holders have been operating for some time and relevant activities and basic financial information are known to the government.

166. Thus, in this the case, I consider that the seller could arrive at a reasonable estimate of the value that the incumbent places on renewing the licence, based on estimates of revenues, costs and the value of synergies. Given the synergies, this value is higher under the factual than under the counterfactual, and if used to inform the choice of a reserve

⁷³ See https://tabcorp.com.au/TabCorp/media/TabCorp/Media%20Releases/19_October_-_Tabcorp-Tatts_announcement.pdf.

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price, it would allow that the seller to potentially benefit from the merger through a higher auction price.

167. I note, however, that the auction may not be successful if there are no bids at or above the reserve. In this instance, I would expect the government to negotiate with the highest value bidder, which in this case I assume to be the merged entity in the factual. The relevant comparison in this case is between the price that arises from the negotiations under the factual with the price in the counterfactual (which is assumed to be equal or close to Tabcorp's value).

168. If negotiations do not break down, I would expect the final price in the factual to be between the high reserve (or the merged entity's value) and the value of Bidder A (which is lower than Tabcorp's value). The stronger the bargaining position of the government, the higher the final price is likely to be. Conversely, the stronger the bargaining position of the merged entity, the lower the final price is likely to be.

169. The outcome of such negotiation is difficult to predict, but it is instructive to consider the parties' outside options if negotiation fails; this refers to the outcomes for the parties if they fail to reach an agreement. Outside options determine to some extent the bargaining power of each party.⁷⁴

170. In the case of the merged entity (under the factual), the outside option is to forego their lottery operation in the jurisdiction, in which case the whole value of the lottery opportunity to the merged entity would be lost and there are likely to be very limited alternatives of similar value. In the case of the government, the outside option is for them to renegotiate with the second highest bidder under the factual (Bidder A).

⁷⁴ See, for example, Osborne, M. and Rubinstein (1990), *Bargaining and Markets*, Academic Press, especially pp. 54-55.

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171. Comparing the two outside options suggests that the government may have a stronger bargaining position than the merged entity because unlike the merged entity which would be faced with the full loss of the value of the lottery opportunity, the Government would have a fall-back value based on the value of bidder A. This may yield a price that could be considerably higher than the lowest possible price (the value of Bidder A), and possibly higher than Tabcorp's value.
172. To put it differently, it is not clear that even in this hypothetical case where Tabcorp would be the second highest value bidder in the counterfactual, and if the reserve price is set too high, that the government would necessarily receive a lower price for the licence in the factual.
173. In addition, or alternatively, to setting a reserve price optimally, there are other strategies that the seller can use, in the case at hand, to promote competition for the licence. For example, instead of a 10 year term, the Victorian government could have chosen longer licence terms as in NSW (40 years) and Queensland (65 years). A longer licence term would make any incumbency advantage less important relative to the present value of the revenue stream associated with the licence, which would attract bidders to the auction.
174. The seller can also hold a simultaneous sale, as described in paragraph 75. This would create uncertainty about the potential participants, leading the merged entity to potentially bid more aggressively than Tatts in the counterfactual, which could lead to higher auction prices in the factual.
175. In paragraph 73, I defined a strategic seller to be a seller that designs the auction rules, including the reserve price, to maximise their expected revenue from the auction. I now explain why in my view it is appropriate to consider the Victorian government as a strategic seller.

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176. First, the Victorian government buys goods and services worth billions of dollars each year. In 2014-15 Victorian Government Departments reported 673 procurement approvals for non-construction goods, for purchases greater than \$100,000, valued at \$1,622 million⁷⁵. Some of these goods and services being procured are complex in nature.⁷⁶
177. Second, the Victorian government has had extensive experience allocating licences for a wide range of entitlements and services, involving complex considerations, including: electronic gaming machines (EGM),⁷⁷ the sale of timber,⁷⁸ metropolitan bus contracts,⁷⁹ and environmental services.⁸⁰

⁷⁵ Victorian Government Purchasing Board, Annual Report, 2014-15, p. 19 available at <http://www.procurement.vic.gov.au/About-the-VGPB/Annual-Reports>

⁷⁶ Victorian Government Purchasing Board, Annual Report, op. cit., pp. 31-36.

⁷⁷ A two stage process was used to allocate the EGM entitlements. While the process was criticised by the Victorian Auditor-General's report for a number of reasons, the sales raised \$980 million from 27,300 entitlements. See Victorian Auditor-General's Report (2011), Allocation of Electronic Gaming Machine Entitlements, available at <http://www.audit.vic.gov.au/publications/2010-11/20110629-electronic-gaming-machines.pdf>

⁷⁸ For timber, VicForests had operated an auction system for selling wood to mills but replaced it with a 'request-for-proposal' process for medium and long term sales, including offering mills a mix of options for the point of sale of timber and flexibility for managing changes in the contract. See Victorian Auditor-General's Report (2013), Managing Victoria's Native Forest Timber Resources, December, p. 49, available at <http://www.audit.vic.gov.au/publications/20131211-Timber-Resources/20131211-Timber-Resources.pdf>.

⁷⁹ The tendering of Metropolitan Bus Contracts in Victoria is an example of a large complex procurement function. Following a competitive tender in 2013 the Melbourne Metropolitan Bus Franchise (MMBF) was awarded to a single operator to deliver around 30 per cent of Melbourne's bus services. It is worth \$1.718 billion in nominal terms over 10 years. The remaining services are provided with 27 private contracts and 11 operators See Victorian Auditor-General's Report (2015), Tendering of Metropolitan Bus Contracts, May, available at <http://www.audit.vic.gov.au/publications/20150506-Bus-Contracts/20150506-Bus-Contracts.pdf>.

⁸⁰ BushTender is an auction approach, implemented by the Victorian Environment, Land, Water and Planning Department, with the objective of protecting and improving native vegetation on private land. Landholders competitively tender for agreements to better manage their native vegetation. Since 2001, around 35,251 hectares of native vegetation have been managed and protected through the BushTender program. Payment for environmental services, by the Victorian Government is currently committed at \$17.5 million See <http://www.depi.vic.gov.au/environment-and-wildlife/environmental-action/innovative-market-approaches/bushtender> and <http://www.depi.vic.gov.au/environment-and-wildlife/environmental-action/innovative-market-approaches/bushtender/bushtender-past-projects>. EcoTender is a conservation auction process where landholders were invited to tender contracts to deliver multiple environmental benefits, primarily by improved native vegetation management on their properties. EcoTender is no longer open to expressions of interest, but the Department is using the experience to support environmental tenders that are being implemented by regional organisations such as Catchment Authorities and Landcare Networks. See <http://www.depi.vic.gov.au/environment-and-wildlife/environmental-action/innovative-market-approaches/ecotender>.

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178. Many of these auctions and tenders involved more complex allocation problems than the allocation of a single lottery licence. For example, the allocation of EGM entitlements in Victoria involved hundreds of club and venue operators and thousands of entitlements. I expect that a government that can tackle, perhaps imperfectly, such complex auctions as those described above, will have the capability of designing a much simpler auction to allocate a single object.

179. I have considered the likely impact on auction prices from the merger, assuming that intellectual property, jackpot pooling and the existence of a customer database may create incumbency advantages. I have also assumed that Tabcorp would be the second highest bidder in the counterfactual (that is, in the absence of the merger) and that the merged entity would be the highest value bidder in the factual. These assumptions are in my view conservative as I have no basis to consider that Tabcorp would be the second highest value bidder in the counterfactual [HIGHLY Confidential to Tabcorp] [REDACTED] [REDACTED].

180. I consider that the Victorian government would have the relevant information to estimate the value of the licences to the merged entity and have the expertise to be able to design an effective auction and, if needed, a negotiation strategy that would reflect its likely stronger bargaining position than the merged entity.

181. In summary, for the proposed merger to impact negatively on the Victorian lottery auction price, all the following conditions need to be met: (i) Tabcorp would need to be a bidder in the auction, (ii) Tabcorp would need to be the second highest value bidder in the counterfactual, and (iii) the Victorian government would not be able to react strategically to a merger that creates a higher value bidder. If any of these conditions is not met, then the merger cannot adversely impact on the auction price. [HIGHLY Confidential to Tabcorp] [REDACTED]

██████████ I have no basis to conclude that condition (ii) holds. Finally, I consider it unlikely that condition (iii) holds.

Impact of the merger on future auctions for Wagering Licences

182. Wagering or betting usually involves staking money on the outcome of an uncertain event such as a race or a sporting event. The forms of wagering available in Australia include totalisator (a form of pari-mutuel), fixed odds, tote odds, and betting through a betting exchange.⁸¹

183. Totalisator wagering involves punters betting against each other in a pooled system.⁸² In a totalisator, the operator pools all wagers on a particular event that have the same bet type, deducts a commission, and distributes the remainder of the pool to punters as dividends according to the outcome of the bets. The final dividends that punters receive are not known until after the betting pool has closed and the event has concluded.⁸³

184. Totalisator operators enter into 'pooling arrangements' with other totalisator operators to create larger pools, which are attractive to punters as they increase the likelihood that the indicative dividends published at the time of placing a bet will be received. They also mean that there is potentially more money available to distribute to winning customers, and more wagering products available to punters (such as wagering on international races).⁸⁴

185. Fixed odds betting involves making a bet on the outcome of an event in circumstances where the punter knows the dividend at the time of making the bet.⁸⁵

⁸¹ Assumptions for Flavio Menezes, paras. 20, 23 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁸² Assumptions for Flavio Menezes, paras. 25, 33 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁸³ Assumptions for Flavio Menezes, paras. 25-26 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁸⁴ Assumptions for Flavio Menezes, para. 29 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁸⁵ Assumptions for Flavio Menezes, para. 35 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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Supplying fixed odds bets involves higher risk than supplying totalisator betting, because punters bet against the bookmaker who commits to fixed odds.⁸⁶

186. Tote odds betting (or derivative wagering) entails the offering of a product in which the dividend received by the customer is based on the final pari-mutuel dividend paid by the totalisator operator for the corresponding event.

187. Bookmakers have a competitive advantage over Tabcorp and Tatts in offering derivative wagering products. The reason is that bookmakers have a lower cost base – for example, they do not need to incur the retail costs, or pay as much tax or make the same level of contributions to the racing industry as Tabcorp and Tatts, and they can mitigate their risk by betting back with other bookmakers and with the totalisator pool. These are some of the likely reasons why neither Tabcorp nor Tatts provide tote derivative wagering (except in the case of Luxbet, Tabcorp's wholly owned corporate bookmaker, which does offer tote derivative wagering).⁸⁷

188. Betting exchanges match punters with directly opposing bets instead of betting with a totalisator or bookmaker.⁸⁸ The betting exchange operator is an intermediary who takes no risk, and charges a commission on each customer's net winnings.⁸⁹

189. Each State and Territory in Australia has its own regulatory regime for wagering and gambling conducted within its jurisdiction. These regimes regulate who may offer the services, and the circumstances in which those services can be supplied, the maximum commission that totalisator operators may charge punters who place totalisator bets; and the taxes that totalisator operators and bookmakers must pay on wagering and gambling

⁸⁶ Assumptions for Flavio Menezes, para. 38 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁸⁷ Assumptions for Flavio Menezes, paras. 40-43, 113 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁸⁸ Assumptions for Flavio Menezes, para. 46 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁸⁹ Assumptions for Flavio Menezes, para. 49 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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services. They also regulate the products that can be offered by wagering operators; and the advertising of wagering services and products.⁹⁰

190. The current holder of each exclusive totalisator licence in each State and Territory, the date the licence was awarded, the bidders for the licence or sale arrangements, and the exclusivity period of the licences are summarised in Table 3 below:

⁹⁰ Assumptions for Flavio Menezes, para. 50 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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Table 3: Totalisator licences, award date, bidders and exclusivity period by State and Territory

State / Territory	Licensee	Bidders when awarded or sale arrangements	Exclusivity/expiry
NSW	Tabcorp provides exclusive totalisator on course and off course wagering services and other approved forms of wagering services. Bookmakers are licensed to provide on course bookmaking and may apply for licenses to accept bets over the telephone and internet.	Tabcorp acquired TAB Limited in 2004. TAB limited was formed in 1998 when NSW government privatised the NSW TAB through an initial public offering.	Exclusive until 2033. Expires in 2097.
Victoria	Tabcorp provides exclusive wagering and betting services on course and off course at various locations. Bookmakers are licensed to provide on course bookmaking.	Three companies qualified to bid for the licence (Tabcorp, Tatts and Ladbrokes). Ladbrokes subsequently withdrew (citing process delays).	Exclusive until 2024. Expires in 2024.
ACT	Tabcorp provides exclusive totalisator services at locations in the ACT and over the telephone and internet. Tabcorp also has a licence to offer fixed odds betting on racing and sporting events. A number of bookmakers are licensed to provide on course bookmaking services only.	The ACT announced a privatisation of the ACTTAB business in 2014, which was then sold to Tabcorp after a competitive process.	Exclusive until 2064. Expires in 2064.
Queensland	Tatts provides exclusive totalisator wagering and fixed odd betting services for racing and other sports, on course and off course. Bookmakers are licensed to provide on course bookmaking services for racing only.	TABQ was formed in 1999 when Queensland Government privatised the Queensland TAB through an initial public offering.	Exclusive until 2044. Expires in 2098
South Australia	Tatts provides exclusive totalisator race wagering and fixed odd betting services and other sports betting services on course and off course. Bookmakers are licensed to provide on course bookmaking services only.	TABQ acquired TAB SA in 2002, when it was privatised, and changed its name to UNITab. Tattersalls and UNITab merged in 2006.	Exclusive until 2017. Expires in 2100.
Tasmania	Tatts provides exclusive totalisator, sports betting, and race wagering. The licence allows Tatts to enter into arrangements with other gaming or wagering providers. Bookmakers are licensed to provide on course bookmaking services.	Tatts acquired Tote Tasmania in 2012.	Exclusive until 2027. Expires in 2062.
Northern Territory	Tatts has an exclusive licence to provide on-course and off-course totalisator services on racing, sports and other approved events. It can supply fixed odds wagering, from the premises specified on the licence. Bookmakers are licensed to supply on-course bookmaking. Corporate bookmakers hold non-exclusive sports licences to supply fixed odds and tote derivative wagering on racing, sporting and other approved events over the phone and via the internet.	TABQ acquired TAB NT in 2000, when it was privatised.	Exclusive until 2035. Non-exclusive for fixed odds wagering from specified premises. Expires in 2035.
Western Australia	RWWA		Exclusive.

Source: Assumptions for Flavio Menezes, para. 10, para. 17, paras. 50-59, paras. 206-208 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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191. The maximum totalisator commissions for all States and Territories are set at 25%.⁹¹ In Victoria there is an exception for amounts invested in an internationally pooled totalisator concerning overseas events where the maximum commission is 40%.⁹² The commissions vary by bet type,⁹³ for example, the maximum commission for a place in New South Wales is 14.25% and 25% for footyTab.⁹⁴
192. Wagering operators pay various fees to stakeholders, in particular to support the racing industry. Both Tabcorp and Tatts in particular are required to make significant economic contributions to the racing industries in the States and Territories where they have totalisator licences.⁹⁵
193. Australian wagering turnover and the revenue of Australian wagering operators have grown significantly over the period 30 June 2006 to 30 June 2015.⁹⁶ Corporate bookmakers have recorded the largest growth in revenues over the period, increasing their share of total wagering revenues from [Confidential to Tabcorp] ██████████ per cent over this period. In contrast, traditional on-course bookmakers have experienced a decline in their share of total revenues from [Confidential to Tabcorp] ██████████ per cent over this period. The various totalisator operators have experienced a decline in their share of total wagering revenues from [Confidential to Tabcorp] ██████████ per cent over the same period.⁹⁷ Digital wagering increased its share of total turnover from [Confidential to Tabcorp] ██████████ per cent over the same period, while the retail turnover share declined from [Confidential to Tabcorp] ██████████ per cent.⁹⁸

⁹¹ Assumptions for Flavio Menezes, paras. 63-71 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁹² Assumptions for Flavio Menezes, para. 65 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁹³ Assumptions for Flavio Menezes, paras. 64, 66 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁹⁴ Assumptions for Flavio Menezes, para. 64 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁹⁵ Assumptions for Flavio Menezes, para. 89 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁹⁶ Assumptions for Flavio Menezes, para. 127 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁹⁷ Assumptions for Flavio Menezes, para. 127 (Tab 1 of FXM-2 [TBP.001.027.1907]).

⁹⁸ Assumptions for Flavio Menezes, para. 128 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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194. Reflecting these broader industry trends, Tabcorp's exclusive retail channel turnover has been in decline and its digital channel growth has been [Confidential to Tabcorp] than the broader industry channel growth.⁹⁹ Fixed odds racing turnover has increased from 20 per cent of total wagering turnover in the 2006 financial year to 42 per cent in the 2015 financial year and fixed odds sports turnover has increased from 10 per cent of total wagering turnover to 21 per cent over the same period.¹⁰⁰ Thus the main trends have been a decline in pari-mutuel wagering, rapid growth in corporate bookmaker services, and growth in sports, fixed odds and digital betting.

195. The trends in wagering described above have implications for the sale of future wagering licences through auctions. In particular, the decline of traditional retail channels vis-à-vis digital channels suggests that any incumbency advantages associated with traditional retail will become less relevant. The relative decline in totalisator bets relative to fixed odds implies that incumbency advantages due to the ability to pool totalisator bets across different jurisdictions will also become less relevant.

196. These two trends combined with the growth in corporate bookmaker turnover suggest that corporate bookmakers may be well positioned to participate in future auctions.

197. Finally, product substitution away from racing to sports makes it more difficult for governments to secure existing race industry funding arrangements under new competitive processes. I will return to the impact of these trends in my analysis below.

⁹⁹ Assumptions for Flavio Menezes, para. 134 (Tab 1 of FXM-2 [TBP.001.027.1907]).

¹⁰⁰ Assumptions for Flavio Menezes, para. 137 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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198. The focus of my analysis in relation to wagering covers the impact of the proposed merger on: the auction of the Victorian wagering licence that expires in 2024; and any future sale of RWWA.¹⁰¹

The sale of the Victorian wagering licence that expires in 2024

199. In this section I assess the impact of the proposed merger on the outcome of the allocation of the wagering licence, currently held by Tabcorp, which expires in 2024. I consider two possibilities. First the Victorian Government could extend the current licence through a negotiation process. Second, the Victorian Government might conduct a competitive tender process.¹⁰²

200. The first step is to consider whether there are any incumbency advantages. I consider two sources of such advantages. The first consists of the physical infrastructure and systems associated with the operation of the existing Victorian licence. Such a potential advantage arises from ownership of the existing licence and would be available to the merged entity under the factual and to Tabcorp under the counterfactual.

201. In my view, such a source of potential incumbency advantage is unlikely to be material for at least two reasons. First, the Wagering and Betting Agreement, between Tabcorp and the Victorian government, contains detailed provisions relating to the transition of operations upon expiry of the licence to an incoming licensee other than Tabcorp.¹⁰³ Second, the traditional shift from traditional retail to online betting has decreased the value of the physical infrastructure to potential bidders.

¹⁰¹ I have not analysed the sale of a second wagering licence in South Australia after the exclusivity period of Tatt's retail wagering licence expired on 10 January 2017 as such sale is unlikely. Assumptions for Flavio Menezes, para. 209 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

¹⁰² Assumptions for Flavio Menezes, para. 213 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

¹⁰³ Assumptions for Flavio Menezes, para. 214 (**Tab 1 of FXM-2 [TBP.001.027.1907]**).

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202. The second source of incumbency advantage I consider is the ability to pool totalisator bets across Australian jurisdictions. Pooling increases certainty about dividends and attracts customers. Given that Tatts and Tabcorp currently hold wagering licences for all Australian jurisdictions, except Western Australia, if such a source of advantage is significant, then it would benefit both firms (and the merged entity under the factual), as well as RWAA or any entity that acquires the RWAA business, in future auctions.
203. If this source of advantage is significant, then it is possible for the merged entity to be the highest value bidder in the factual and that Tabcorp and Tatts are the highest and second highest value bidders (or vice versa) in the counterfactual. In this case, the auction price could decline with the merger.
204. The significance of this advantage, however, is unclear. First, any advantages that arise from pooling may become less valuable, as more customers shift to fixed odd bets. Second, and as explained in paragraph 184, pooling arrangements may be reached by commercial agreement between two different licence holders rather than through ownership of the two licences. Also, international operators may have an increased ability to market Australian races overseas (and vice versa) and so pooling across Australian jurisdictions may be less valuable.
205. The third source of potential incumbency advantage includes Tabcorp's existing customer accounts and information across the different jurisdictions it operates, including Victoria. This allows Tabcorp to offer rebates on its totalisator products to large punters. It also allows Tabcorp to offer fixed odds bets on racing and sporting events at venues throughout Australia and overseas using a single fixed odds book and risk management system.¹⁰⁴

¹⁰⁴ Assumptions for Flavio Menezes, para. 106-109 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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206. I am also uncertain about the extent to which such an advantage is significant. I note that corporate bookmakers, for example, have a competitive advantage in offering tote derivative products and may also be able to use their own customer accounts information to offer discounts to large punters. Corporate bookmakers may also have a greater ability to monitor customers' behaviour online vis-à-vis those operating through a physical retail platform.
207. Even if existing customer account information may indeed confer incumbency advantages in the way the Victorian wagering business may operate today, the market trends discussed in paras. 194-195 challenge the relevance of any such advantages going forward.
208. While I am uncertain about the significance of any existing incumbency advantage, I, again take a conservative approach and assume that such advantages are sufficiently significant that the merged entity is the highest value bidder in the factual,¹⁰⁵ and Tabcorp and Tatts are the highest and second highest value bidders, respectively, in the counterfactual.¹⁰⁶ For ease of exposition, I assume that Bidder A has the second highest value bid in the factual and the third highest value in the counterfactual.
209. In this instance, the price under the factual is close to Bidder A's value (the second highest value in the factual), and the price in the counterfactual is close to the value that Tatts assigns to the licence (the second highest value in the counterfactual). It follows, therefore, that it is possible for the price to decline in the factual, as Tatt's value for the licence is assumed to be higher than Bidder A's value.

¹⁰⁵ I note that if the merged entity is the second highest value bidder in the factual, then the auction price is likely to be higher under the factual than under the counterfactual. The reason is that the value of the merged entity will be higher, due to synergies, than the value of the second highest in the counterfactual.

¹⁰⁶ The analysis does not change qualitatively if we assume instead that Tatts and Tabcorp are the highest and second highest value bidders, respectively, in the counterfactual.

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210. As discussed in paragraphs 73 to 77, a strategic seller, can utilise a number of mechanisms to counter the potential negative impact of the merger on the auction price. In paragraphs 175 to 181, I assessed the Victorian government as strategic.

211. Strategies that could be used by the Victorian government include setting the reserve price strategically to account for the synergies. They also include promoting auction participation by allowing foreign corporations, or foreign owned domestic businesses, to bid, and by changing the format of the auction to a simultaneous sales process. Moreover, the increased importance of digital channels over traditional retail channels and the relative decline of totalisator betting over fixed odds betting also suggests that corporate bookmakers could enter a well-designed auction. In this respect I note that it is likely that:¹⁰⁷

(a) corporate bookmakers operating in Australia could leverage their significant overseas retail experience: these bookmakers include, Ladbrokes, which has close to 4,000 betting shops in the United Kingdom, and William Hill which has around 2,300 stores; and

(b) other corporate bookmakers would be interested in bidding for the Victorian licence, including Sportsbet (Paddy Power), which describes itself as *“the market leader in the fast-growing Australian online betting market”*¹⁰⁸ and CrownBet, who according to their website has *“wagering’s most advanced mobile app”* and gives punters *“superior odds and daily Bonus Bet specials across a variety of sport and racing events.”*¹⁰⁹

212. In summary, I find that for the proposed merger to lead to lower prices in a competitive process, a number of conditions must be satisfied: it must be the case that there are substantive incumbency advantages either as a result of pooling arrangements

¹⁰⁷ Assumptions for Flavio Menezes, para. 215 (Tab 1 of FXM-2 [TBP.001.027.1907]).

¹⁰⁸ <https://www.paddypowerbetfair.com/~media/Files/P/Paddy-Power-Betfair/documents/q3-2016-trading-update.pdf>, at page 5.

¹⁰⁹ See <https://crownbet.com.au/about-us>.

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within Australian jurisdictions that can only be achieved by ownership of licences or as a result of Tabcorp's customer information (or both); that Tatts is the second highest value bidder in the counterfactual; and that the seller does not take any steps to benefit from the increase in the value of the licence to the highest bidder that results from the synergies generated by the merger. For the reasons outlined above, I consider it to be unlikely that all these conditions will hold.

213. Finally, I consider the impact of the merger on a negotiation between the Victorian government and Tabcorp to extend the licence beyond 2024. I consider the same conditions above. That is, that the incumbency advantages from pooling and ownership of customer account information are sufficiently significant to make the merged entity the highest value bidder in the factual and that Tabcorp and Tatts are the highest and second highest value bidders, respectively, in the counterfactual. For ease of exposition, I assume that the second highest value bidder in the factual is Bidder A, which has a value lower than Tatts' value by assumption.

214. I first consider possible outcomes of the negotiation in the counterfactual. As discussed in paragraph 169, the outcome of such a negotiation is difficult to predict, but it useful to consider the parties' outside options if negotiation fails.

215. In the case of Tabcorp, its outside option is to forego their wagering operation in Victoria. In the case of the government, the outside option is to renegotiate with the second highest value bidder, which is assumed to be Tatts. Thus, if negotiations do not breakdown, I expect the final price to lie between Tabcorp's value and Tatts' value (or close to it).

216. Comparing the two outside options suggests that the government may have a stronger bargaining position than Tabcorp, and the price could be considerably higher than the lowest possible price (which is close to Tatts' value).

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217. Under the factual, the outside option of the merged entity continues to be the loss of the wagering operation in Victoria. The outside option for the government is to renegotiate with the second highest bidder under the factual (Bidder A), which is lower than Tatts' value by assumption. Thus, if negotiations do not breakdown, I expect the final price to lie between the merged entity's value, which is higher than Tabcorp's value due to the synergies, and Bidder A's value (or close to it).

218. Again, comparing the two outside options suggests that the government may have a stronger bargaining position and could secure a price that is considerably higher than the lowest possible price (the value of Bidder A), and it is possible that the final price could be higher than Tatts' value. That is, even if all the conditions outlined above in paragraph 213 are satisfied, it is not clear that the Victorian government would receive a lower price in the factual if it decided to negotiate an extension of the licence with the merged entity rather than rely on a competitive process.

The potential privatisation of RWWA

219. The Western Australian Government may privatise RWWA in the medium term. If the Government was to sell RWWA I consider it likely that the State Government will sell RWWA as a going concern rather than auction off an exclusive wagering licence.¹¹⁰

220. This implies that any incumbency advantages associated with the ownership of infrastructure and systems will not be present, and will facilitate the entry of operators, other than Tatts and Tabcorp.

221. As discussed in paragraph 154, the other source of incumbency advantage is the potential of existing licence holders to pool totalisator bets across jurisdictions. If material,

¹¹⁰ Assumptions for Flavio Menezes, para. 210 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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such an advantage would make it more likely that winners of previous competitive processes in other jurisdictions would win future auctions.

222. In particular, if this ability were significant, it could be argued that the merged entity would likely be the highest value bidder in the factual and Tatts and Tabcorp the highest and second highest value bidders (or vice versa) in the counterfactual. Under these conditions, it would be possible for the sale price of RWWA to be lower in the factual than in the counterfactual, as the merger would remove the second highest value bidder.

223. There are many reasons why the ability to pool totalisator bets across jurisdictions may not constitute a significant advantage. First, [HIGHLY Confidential to Tabcorp]

[REDACTED]

224. Second, the value to a bidder of pooling with other Australian jurisdictions may be lower now than in the past, and it may decline further in the future. This may be the result of the reduction in the relative importance of totalisator bets versus fixed odd bets, the growth in online betting, including derivative betting, the possibility that international operators may provide new offerings and opportunities for international pooling, and the emergence of novel business models.

225. Third, even if pooling still provides a significant advantage to licence holders in other jurisdictions in competing for the RWWA business, there are other potential sources of synergies and advantages that may benefit other potential competitors. Indeed, Assumptions for Flavio Menezes, para. 211 (Tab 1 of FXM-2 [TBP.001.027.1907]) [HIGHLY

¹¹¹ Assumptions for Flavio Menezes, para. 212 (Tab 1 of FXM-2 [TBP.001.027.1907]).

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Confidential to Tabcorp] [REDACTED]

[REDACTED] :

(a) **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

(b) In 2015 Seven West acquired Victorian thoroughbred broadcasting rights and launched a thoroughbred racing channel, Racing.com. CrownBet is Racing.com’s premium wagering partner for 2015 and 2016 and Ladbrokes is its Associate partner. **[HIGHLY Confidential**

to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) Other online providers including corporate bookmakers Ladbrokes, William Hill, and Sportsbet (Paddy Power), which already have a strong presence in Australia and have experienced an increase in the their share of total revenue from wagering

226. The existence of a number of credible bidders, in addition to industry trends that result in a reduction of the importance of any incumbency advantages through inter-jurisdictional pooling, and the **[HIGHLY Confidential to Tabcorp]** [REDACTED] [REDACTED], casts doubts on assigning a significant likelihood that the proposed merger would result in a lower sales price for RWWA.

227. Nevertheless, even if we were to consider the merged entity as the highest value bidder under the factual, and Tabcorp and Tatts the highest and second highest value

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bidders in the counterfactual, it is not clear that price will be lower in the factual. The reason again is that a strategic seller could utilise a number of strategies to counter the reduction in competition associated with the merger.

228. As with other states and territories in Australia, I consider the Western Australian government to be a strategic seller. The State government buys billions of dollars of goods and services every year. Total goods and services expenditure reported by the Western Australian government in 2014-15 was \$14.05 billion,¹¹² some of which are complex in nature. The Western Australian government allocates licences across a number of sectors including water,¹¹³ commercial fishing¹¹⁴ and mineral exploration.¹¹⁵

229. While these licences are not sold through standard auctions, each of these allocations is governed by mechanisms that illustrate that the Western Australian Government acts strategically. For example, in the case of commercial fishing, access fees are levied as a percentage of the gross value of production of each fishery,¹¹⁶ and the industry is managed through annual quotas. Thus, government revenue is not raised through the sale of the licence through an auction, but rather through the access fees linked to actual output associated with a licence. That is, the Western Australian government does not simply issue a licence if certain criteria are met, such as the case for example with a driver's licence, but instead it has designed an allocation system with the objective of maximising the value generated by the industry (such as commercial fisheries) to Western Australia. This in my view suggests that the Western Australian government would act as a strategic seller if they were to sell RWWA.

¹¹² Government of Western Australia, 'Who Buys What and How: 2014-2015'. Available at http://www.finance.wa.gov.au/cms/uploadedFiles/Government_Procurement/Publications/Reports/wbwh_2014-15_full_report.pdf.

¹¹³ <http://water.wa.gov.au/licensing/water-licensing/water-licensing-in-western-australia>.

¹¹⁴ <http://www.fish.wa.gov.au/Fishing-and-Aquaculture/Commercial-Fishing/Commercial-Fishing-Licences/Pages/default.aspx>.

¹¹⁵ <http://www.dmp.wa.gov.au/Minerals/Mining-Tenements-explained-5145.aspx>.

¹¹⁶ See http://www.fish.wa.gov.au/Documents/annual_reports/annual_report_2015-16.pdf, p. 90.

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230. A strategic seller would set the reserve price to maximise the seller's revenue, and setting the reserve may be more important for a seller who is concerned with a reduction in competition in the auction. Government ownership of RWWA means that it has sufficient information to establish an effective reserve price. The government could promote competition by allowing foreign corporations, or foreign owned domestic businesses, to participate in the sales process. It could adopt a simultaneous sales process to reduce any advantage that the merged entity may have.
231. Moreover, the State Government could conduct an initial public offering rather than auctioning off the business, or it could retain ownership if the highest bid was not sufficiently high or did not meet the reserve price.
232. In summary, I consider it unlikely that the proposed merger could result in a decrease in the sales price of RWAA. Crucial to this conclusion is the low likelihood that I assign to either Tatts or Tabcorp setting the counterfactual sales price. This is due to a number of reasons including **[HIGHLY Confidential to Tabcorp]** [REDACTED], and the existence of other potential credible bidders that could be potential price setters in the counterfactual (or actually winners in the factual). Moreover, even if Tabcorp and Tatts were price setters in the counterfactual, the Western Australian government has a number of strategies that could lead to a higher, rather than lower, price under the factual, due to the presence of a stronger bidder created by the merger.

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

Flavio M. Menezes

Flavio Menezes

Schedule 1: Worked Example of Impact of the Proposed Merger on Welfare

1. In this attachment I consider how any synergies in the operation of Keno will manifest themselves in an increased value for a Keno licence. That is, if under the counterfactual (the absence of the merger) the value of the licence to Tabcorp was equal to V_{Tab} , and the value of the licence to Tatts equal to V_{Tatts} , then under the factual (the merger occurs), the value that the merged entity assigns to the Keno licence is equal to $V_M = \text{Max}\{V_{Tab}, V_{Tatts}\} + S$, where S represents the value of the Keno-related synergies, and $\text{Max}\{V_{Tab}, V_{Tatts}\}$ denotes the maximum value amongst V_{Tab} and V_{Tatts} .
2. In my view this an economically sound way to consider the value that the merged entity assigns to the licence. For the remainder of this example, I assume that V_{Tab} is larger than V_{Tatts} . That is, $\text{Max}\{V_{Tab}, V_{Tatts}\} = V_{Tab}$. This assumption is made for illustrative purposes only.
3. Suppose that, in addition to Tabcorp and Tatts, there are N other bidders who will bid for the licence. I assume that the merger does not change the values that these bidders assign to the licence or their decision to bid and denote the highest value amongst these N bidders as V_N^* . I also assume that the seller has no intrinsic value for the licence.
4. The value of unweighted total welfare is equal to $\text{Max}\{V_{Tab}, V_N^*\}$ in the counterfactual and equal to $\text{Max}\{V_{Tab} + S, V_N^*\}$ in the factual. Thus, total welfare cannot decrease with the merger, which can be explained by considering all different possibilities as follows.
5. If V_{Tab} is larger than V_N^* , that is Tabcorp is the highest value bidder in the counterfactual, then total welfare under the factual is strictly greater than under the counterfactual and the increase in unweighted total welfare is equal to S . This follows as total welfare in the

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counterfactual is equal to $Max\{V_{Tab}, V_N^*\} = V_{Tab}$ and total welfare in the factual is equal to $Max\{V_{Tab} + S, V_N^*\} = V_{Tab} + S$.

6. If, instead, V_N^* is larger than $V_{Tab} + S$, then the unweighted total welfare is equal to V_N^* both in the factual and counterfactual. The reason for this is that in this case, $Max\{V_{Tab} + S, V_N^*\} = Max\{V_{Tab}, V_N^*\} = V_N^*$.
7. Finally, if $V_{Tab} + S$ is larger than V_N^* , which in turn is larger than V_{Tab} , then the unweighted total welfare in the factual is $V_{Tab} + S$ and under the counterfactual is V_N^* and the increase in welfare is equal to $V_{Tab} + S - V_N^*$. In each of the possible cases, the difference in the unweighted total welfare between the factual and the counterfactual is greater than or equal to zero.
8. Having shown in this example that unweighted total welfare cannot decrease when a merger involves synergies, I now focus on weighted total welfare. In particular, I consider the following total welfare function $TW = \delta(V - P) + P$, where δ is the weight given to the winner's surplus, the weight given to the seller's surplus is equal to one, V is the value of the licence to the highest bidder, and P the auction price. If $\delta = 1$, then the winner's surplus receives the same weight as the seller's surplus, and total welfare is equal to V .
9. The relevant case to examine in this example is when the merged entity is the highest value bidder in the factual: $V_{Tab} + S$ is greater than V_N^* . I will consider two possible counterfactuals: (i) V_{Tab} greater than V_N^* , which in turn is greater than V_{Tatts} ; and (ii) V_{Tab} greater than V_{Tatts} , which in turn is greater than V_N^* . $Tatts$ is the second-highest bidder in the counterfactual (ii), but not under counterfactual (i). For illustrative purposes, I assume that the auction price is equal to value of the second highest bidder; more generally, the auction price is constrained or influenced by such a value. Thus, the auction price in the

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factual is equal to $P^F = V_N^*$, the auction price under counterfactual (i) is equal to $P_i^{CF} = V_N^*$, and under counterfactual (ii) equal to $P_{ii}^{CF} = V_{Tatts}$.

10. I can then compare the change in welfare, ΔTW , between the factual and the two counterfactuals as follows:

(a) Under counterfactual (i) where the counterfactual auction price is V_N^* :

$$\Delta TW_i = \delta(V_{Tab} + S - V_N^*) + V_N^* - \delta(V_{Tab} - V_N^*) - V_N^*.$$

This simplifies to $\Delta TW_i = \delta S$, which is positive. This shows that if Tatts in this example is not the second highest value bidder, and Tabcorp is the highest value bidder in both the factual (as part of the merging entity) and counterfactual,¹¹⁷ then a merger involving synergies strictly increases weighted total welfare.

(b) Under counterfactual (ii) where the counterfactual auction price is V_{Tatts} :

$$\Delta TW_{ii} = \delta(V_{Tab} + S - V_N^*) + V_N^* - \delta(V_{Tab} - V_{Tatts}) - V_{Tatts}.$$

This simplifies to $\Delta TW_i = \delta S - (1 - \delta)(V_{Tatts} - V_N^*)$. The first component is the gains in the weighted total welfare from the synergies and the second component the decrease in price following the removal, through the merger, of the second highest value bidder. For total welfare to decrease under this counterfactual:

$$(1) S < \frac{(1-\delta)}{\delta} (V_{Tatts} - V_N^*).$$

¹¹⁷ I note that if neither Tabcorp nor Tatts are the highest value bidders in this example under the counterfactual, then a merger between the two that involves synergies cannot decrease auction prices. To see this, note that if V_N^* is the highest value in the counterfactual, and V_{Tab} the second highest value, then the price in the counterfactual is equal to V_{Tab} . In the factual, if the merged entity's value, $V_{Tab} + S$, is greater than V_N^* , then it wins the auction and the auction price is equal to V_N^* . If instead, the value for the merged entity in the factual is the second highest, then the bidder with value V_N^* wins the auction and the price is equal to $V_{Tab} + S$. In both cases, auction prices increase in the factual versus the counterfactual.

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Thus, total welfare is more likely to decrease the lower is the weight on the winner's surplus (δ), the smaller the synergies (S), and the higher is the difference between the second highest value in the counterfactual (T_{atts}) and the highest value amongst other bidders ($V_{T_{atts}} - V_N^*$).

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 “**FXM-1**” to the expert report of **FLAVIO MENEZES** dated **9 March 2017**.

Exhibit FXM-1

Filed on behalf of Tabcorp Holdings Limited (Applicant)

Prepared by Grant Marjoribanks

Herbert Smith Freehills

Tel (02) 9225 5517

Email grant.marjoribanks@hsf.com

Address for service

Level 34
161 Castlereagh Street
Sydney NSW 2000
AUSTRALIA

Fax (02) 9322 4000

Ref 82602332



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

Tab	Description	Document ID
1	Letter of Engagement from Herbert Smith Freehills to Flavio Menezes dated 23 December 2016	TBP.001.027.5154
2	Letter of Instructions from Herbert Smith Freehills to Flavio Menezes dated 6 March 2017	TBP.001.029.0003
3	Tabcorp ASX Release regarding proposed merger with Tatts Group Holdings dated 19 October 2016	TBP.011.001.0110
4	Presentation released to the ASX dated 19 October 2016	TBP.006.001.0121
5	Merger Implementation Deed	TBP.004.011.0610
6	Curriculum Vitae of Flavio Menezes	TBP.001.026.0850
7	Expert Evidence Practice Note (GPN-EXPT)	TBP.001.027.2039

Flavio M. Menezes – Curriculum Vitae
Professor of Economics
School of Economics, The University of Queensland
Brisbane, QLD, 4072, Australia
Email: f.menezes@uq.edu.au

CAREER SUMMARY

- ❑ Over 75 peer reviewed articles and book chapters in market design, public economics, competition and regulatory economics, a major book in auction theory and a number of policy publications that are cited in regulatory proceedings and in submissions to government reviews in competition and regulation.
- ❑ Supervision of over 25 PhD, Master and honours students.
- ❑ Leadership roles in the university sector (ANU and UQ), private sector (Vice President at CRA International), government (Deputy Chairperson of the Queensland Competition Authority) and the not-for-profit sector (President of the Economic Society of Australia, QLD), member of the Economics and Commerce Panel of the Australian Research Council's (ARC) 2015 ERA, past member of the Executive Committee of the ARC Economic Design Network and of the Board of the Centre for Market Design at the University of Melbourne, current member of the standing committee of the Econometric Society (Australasia).
- ❑ During tenure as Head of the School of Economics at UQ, the school experienced considerable growth and change and became the top economics department in Australia according to RePec (<https://ideas.repec.org/top/top.econdept.html>).
- ❑ As foundation director of the Australian Centre of Regulatory Economics, developed a suite of new postgraduate programs, funded by industry and government, and established the Centre's research program that resulted in two ARC Discovery grants and a number of publications.
- ❑ Regular contributor to public policy, providing advice to public and private organisations on market design issues in defence, communications, banking, transport, health, environment, energy, and water.
- ❑ Plenary or invited speaker at over 40 national and international conferences and workshops over the past ten years.
- ❑ Associate Editor and member of editorial boards in Australian journal and international journals. Co-editor of the Economic Record from January 2016.
- ❑ Research proposal assessor for a number of international research funding agencies including the Social Sciences and Humanities Research Council of Canada, Deutsche Forschungsgemeinschaft (Germany), FTC (Portugal), Research Foundation - Flanders, (Belgium), Australian Research Council (ARC) and CNPQ (Brazil).
- ❑ Successful track record in attracting ARC and industry funding.
- ❑ Shortlisted for the 2017 ARC Centre of Excellence Round.

CURRENT AND PREVIOUS SUBSTANTIVE POSITIONS

2006 -	Professor of Economics, University of Queensland.
2016-	Deputy Chair, Queensland Competition Authority.
2009-2015	Head of the School of Economics, University of Queensland.
2004-2006	Director, Australian Centre of Regulatory Economics, ANU.
2005-2006	Vice-President (part-time), CRA International.
2003-2006	Professor of Regulatory Economics and Professor of Economics, ANU.
2003	Deputy Head, School of Economics, ANU.
1993-2002	Lecturer, Senior Lecturer and Reader, School of Economics, ANU.

AWARDS, HONOURS, PROFESSIONAL RECOGNITION

2016-	Fellow, Academy of Social Sciences in Australia.
2016-	President, Economic Society of Australia (QLD).
2015-	Senior Research Fellow, Australian Institute of Business and Economics.
2015-	Member of the Economic Society of Australia National Economic Panel.
2015-	Elected member of the Standing Committee of the Econometric Society (Australasia)
2015	Excellence in Research for Australia, Member of the Economics and Commerce Panel.
2014-2016	Fellow, Centre for Policy and Market Design, UTS.
2014	Board Member, Centre for Market Design, The University of Melbourne.
2011-2016	Vice-President, Economic Society of Australia (QLD).
2004	Economic Society of Australia Prize for best paper.
1995-	Visiting appointments: Graduate School of Economics (FGV), NUS, ANU, University of Auckland, University of Melbourne, Harvard University, Oxford University, University of Sydney, University of Alabama, Institute for Pure and Applied Mathematics (IMPA), University of Texas-Austin, University of Oregon, ISCTE (Portugal), University of Gothenburg, and Universidad de Chile.
1993	Premio Adriano Romariz Duarte – Best paper in the Brazilian Review of Econometrics, the Journal of the Brazilian Econometric Society.

QUALIFICATIONS

1993	Ph.D. in Economics, University of Illinois at Urbana-Champaign.
1988	Master of Economics, Graduate School of Economics, FGV.
1985	Bachelor of Economics, Universidade Estadual do Rio de Janeiro.

SIGNIFICANT RESEARCH CONTRIBUTIONS

Research undertaken by Professor Menezes has contributed significantly to a range of economic fields. In particular:

- ❑ Multiple unit auctions – this research has been used to explain low revenue in some spectrum auctions in the USA and in Europe and it is cited in patents for Clock Auctions.
- ❑ Entry and corruption in auctions – this research has provided important insights into market design across a range of sectors.
- ❑ Pooled auctions – research provides an attractive alternative design for the sale of multiple objects.
- ❑ Private provision of public goods – this research has attracted a large number of citations in the field of fundraising
- ❑ The holdout problem in the context of land assembly – this research has attracted a number of citations in law and economics and urban studies.
- ❑ Regulation and competition economics – this research is regularly cited in regulatory proceedings both in Australia and overseas.

TEACHING, PUBLIC LECTURES AND STUDENT SUPERVISION

Teaching

- ❑ Auctions and Tenders, (Corporate Education, UQ Business School)
- ❑ Competition and Regulatory Policy (University of Queensland)
- ❑ Regulatory Economics (University of Queensland)
- ❑ Public Finance (University of Queensland)
- ❑ Economics of Regulation (Intensive Course, ANU)
- ❑ Competition Policy (Intensive Course, ANU)
- ❑ Introduction to Regulatory Economics (Intensive course, ANU)
- ❑ Industrial Organisation (ANU and EPGE/FGV)
- ❑ Economics of Information and Uncertainty (ANU and EPGE/FGV)
- ❑ Microeconomics (Diploma level, ANU)
- ❑ Microeconomics IV (Honours, ANU)
- ❑ Microeconomics III (Graduate Game Theory Course, EPGE/FGV)
- ❑ Microeconomics II (Honours Component)
- ❑ Public Economics (Pass, Honours, and Graduate Components, ANU)
- ❑ Mathematics for Economists A and B (ANU)
- ❑ Mathematical Economics (ANU and IMPA)

Public Lectures, Workshops and Short Courses

- ❑ Panel Discussion, 'Bitcoin: The currency of the future or financial disaster?', UQ Art Museum, February 2017.
- ❑ Panel Discussion, 'Art and value' discussion panel, UQ Art Museum, November 2016.
- ❑ Innovative Ways to Fund Infrastructure, 2nd Annual Queensland Infrastructure Projects Conference, Brisbane, October 2016.
- ❑ Cost Benefit Analysis under Extreme Uncertainty, Forecasting for Cost Benefit Analysis Forum, hosted by Economic Society of Australia (NSW Branch) and the NSW Department of Industry, Sydney, October 2016.
- ❑ Judge at the Grand Final of the University of Queensland Economic Society Policy Pitch Competition, August 2016.
- ❑ Speaker at the Inaugural seminar on Corruption and Anti-Corruption Measures organised by the Instituto Brasileiro de Direito Aplicado, Brasilia, August 2016.
- ❑ Speaker at the 7th Annual Queensland Transport Infrastructure Conference, May 2016, Brisbane.
- ❑ OECD and FGV/CERI Workshop on Regulatory Governance, FGV, Rio de Janeiro, December 2015.
- ❑ FGV/CERI Workshop on Public-Private Partnerships and Risk Allocation, Rio de Janeiro, December 2015.
- ❑ CCEE (The Brazilian Market Clearing House for the Electricity Sector). Market Design: Some Insights, Sao Paulo, December 2015.
- ❑ Regulatory Economics: Theory and Practice in Australia. Lecture at the Federal Treasury, Canberra, October 2015.
- ❑ Chaired the Competition Policy Panel at the Australian Conference of Economics in Brisbane, July 2015. <http://ace2015.org.au/policy-panels/>.
- ❑ The Australian Economy, Logan Rotary Club, QLD, April 2015.
- ❑ Public Private Partnerships in Transport Infrastructure: Lessons for Developing Countries. Public event organised by the Instituto Brasileiro de Direito Aplicado, Brasilia, March 2015.
- ❑ Public Private Partnerships in Transport Infrastructure: Lessons for Developing Countries. Keynote Speech at the Foreign Trade University Conference on PPPs, Hanoi, August 2014.

- ❑ The Global Economy and International Education, UQ International Global Symposium, August 2014.
- ❑ The Economics of Climate Change, AMUNC (Asia-Pacific Model United Nations Conference, July 2014, Brisbane; UQ Open day in Singapore and Vietnam (HCMC) and various junior colleges in Universities in Singapore, Malaysia and Vietnam, August 2014.
- ❑ The 2014 Asia-Pacific Productivity Conference Round Table on Productivity, Regulation and Public Policy, July 2014, Brisbane.
- ❑ Infrastructure Investment in Brazil: Challenges and Solutions, Australian-Brazil Chamber of Commerce, 2013.
- ❑ Market design – a key application of game theory, QLD Economic Society of Australia, August 2013. Presentation available at <http://www.esaqld.org.au/events/market-design-flavio-menezes/>.
- ❑ Public-Private Partnerships for Transport Infrastructure, Public-Private Partnerships: Building Infrastructure for the Future, ISCR, Wellington, NZ, August 2013.
- ❑ Market Design for the real world, NSW Treasury, January 2013; Shandong University and Sichuan University, March 2013; UQ Open day in Hong Kong and Guangzhou, May 2013, UQ Economics Schools Day, July 2013, University of Economics (HCMC, Vietnam), August 2014.
- ❑ The Economist of Public and Private Partnerships, Sydney's Rail Future 2013 Conference, February 2013.
- ❑ Auctions and Public Policy, Center for studies in Social Sciences, Calcutta, India, November 2012; NSW Treasury, January 2013.
- ❑ DSM and Electricity Regulation, University of Melbourne, 2012.
- ❑ Allowance for Corporate Equity, Federal Treasury, Canberra, August 2012 and Center for Studies in Social Sciences, Calcutta, India, November 2012.
- ❑ The Economics of Sustainability, UQ Economics Schools day, July 2012.
- ❑ Capacity Extensions for Essential Facilities Subject to Access Regulation, QCA, Brisbane, May 2012.
- ❑ Understanding Regulation, presentation at Guangdong University of Foreign Studies, Guangdong, China, March 2012.
- ❑ Has the new economics of regulation made any difference to regulation?, Connect: Economics and Policy Workshop, University of Wollongong, February 2012.
- ❑ Understanding the Economics of Auctions and Tenders, UQ Corporate Education Program, February 2012.
- ❑ Defence Spending and Economic Growth, presentation at the Royal United Service Institute Queensland Seminar, Brisbane, November 2011.
- ❑ The Business of Physiotherapy: An Economist's Perspective, presentation at The Business of Physiotherapy Conference, Brisbane, October 2011.
- ❑ Australia: The Land of Duopoly? Australian Economic Forum, Sydney, September 2011.
- ❑ Engaging with Industry, Uniquist Experts' Exchange, September 2011.
- ❑ The Economics of Flood Insurance, presentation at the UQ workshop organized in conjunction with the Disaster Insurance Review Panel, May 2011.
- ❑ Floods, Earthquakes and Tsunamis: How Can Natural Disasters Affect the Global Economy in the Wake of the GFC? Presentation at various Junior Colleges, Singapore, May 2011.
- ❑ International Economics: What is it? Who do we need to study it? Presentation at various high schools, Singapore, May 2011.
- ❑ Tendering for Pathology Services, National Pathology Forum, Sydney, December 2010.
- ❑ The Role of Competitive Federalism in Contemporary Regulation, Treasury, Canberra, November 2010.
- ❑ MC at various University functions including the Colin Clark Lecture, the public lecture at UQ by Joseph Stiglitz in August 2010, and the UQ Faculty of Economics, Business and Law Alumni Lecture Series.

- ❑ Presentation to High School and University Students in Latin America and in the Asia Pacific Region on the role of economists and the future of economics.
- ❑ Climate Change: How Can Economists Help, QETA Conference, Brisbane, July 2010.
- ❑ The Sale of Queensland Rail's Coal Assets, Customs House, the University of Queensland, Brisbane, July 2010.
- ❑ Overview of the RSPT (mining tax), CEDA lunch, Brisbane, June 2010.
- ❑ Cartel Criminalisation: Some Economic Insights, UQ Alumni Debate on Cartel Criminalisation, April 2010.
- ❑ The Economics of Aged Care: An Introduction, The University of Queensland, November 2009.
- ❑ Market Design Issues in Electricity, OSINERG, Peru, September 2009.
- ❑ The Future of Infrastructure Regulation, Foreign Trade University, Hanoi, Vietnam, April 2009.
- ❑ Invited Speaker at 52nd Australian Agricultural and Resource Economics Society Meetings, February 2008.
- ❑ Market Design Issues in Emissions Trading, Expert Workshop on Auctioning Greenhouse Gas Permits, November 2007, Australian School of Business, UNSW, Sydney.
- ❑ Procuring Health Services: Some Policy Issues, October 2007, ARC Economic Design Network Health Policy Roundtable, UTS, Sydney.
- ❑ Empirical Approaches for Identifying Maverick Firms, Invited Speaker at the 2007 Australian Law and Economics Association Meeting and at the 2007 Australasian Econometric Society.
- ❑ CRAI Short Courses on Telecommunication Economics (Canberra, April 2006), Infrastructure Economics (Sydney, May 2006), Competition Economics (Melbourne, June 2006 and for BDW Competition team on August 2006) and Defence Economics (November 2006).
- ❑ Copyrights, Clean Air and Bazaars: The Economics of Market Making, 12th Biennial Copyright Law and Practice Symposium, Sydney, 2005.
- ❑ Exclusionary Conduct: Theory, Tests and Some Relevant Australian Cases, 3rd South Australian Trade Practices Workshop, October 2005.
- ❑ Bundling in the context of procurement, internal CRAI Seminars, 2005 Industry Economics Conference and University of Adelaide, September, 2005.
- ❑ Electricity Retail Regulation, ACCC Regulatory Conference, July 2005 and ESV VIC, A Presentation to the Filipino Regulations, August 2005, and the 2005 ACORE Forum on Introducing Competition in Infrastructure Industries.
- ❑ New Communications Technology and Policy Reform: Prospects and challenges, Australian-Japan Research Centre, ANU, August 2005.
- ❑ Assessing Price Regulation in Australia, Forum on Price Cap Regulation, ANU, August 2004.
- ❑ Access Pricing: A Primer, ANU House, Melbourne, August 2004.
- ❑ Regulatory Economics: A Presentation to the new Indonesian oil and gas regulators, Canberra, June 2004.
- ❑ Regulatory Economics for non-Economists, workshop delivered to individuals from regulatory agencies and regulated companies, Adelaide, May 2004.
- ❑ The Water Industry in Victoria: Working in the New Regulatory Regime, workshop delivered to the water utilities in Victoria, Ballarat, April 2004.
- ❑ Regulatory Economics for Economists, Workshop delivered to individuals from regulatory agencies and regulated companies, ANU House, Melbourne, February 2004.
- ❑ Roundtable on regulatory reform: What remains to be done?, Forum on Postgraduate Economics, ANU, 2003.
- ❑ Short Courses on (1) Understanding Auction Theory and Applications; (2) Price Discrimination (Monopoly and Imperfect Competition); (3) Product Differentiation; and (4) Monopoly Regulation to consultants employed by NECG and their clients (Sydney and Canberra), 2000-2004.

- ❑ Short Course on “Understanding Auctions” at the 1999 Meeting of the Brazilian Econometric Society, December 1999.
- ❑ Short course on auction theory to Treasury officials as part of a refresher course, February 1999.
- ❑ Short Course on the economics of corruption given to students enrolled in the NCDS unit Corruption and anti-corruption, October 1998 and July 1999.
- ❑ Invited Lecture, Australian Econometric Society Meetings, “Auctions of Single Objects”, 1998.
- ❑ Public Lecture on “Understanding Auctions” organized by the Real Estate Institute of Australia, 1997.

Current Student Supervision

- ❑ Ph.D. Supervision: Jorge Pereira (UQ, School of Economics), “Dynamic R & D Competition.”

Past Supervision

- ❑ Ph.D. Supervision: Xuemei Zheng (UQ, School of Economics), “Essays on energy efficiency and regulation,” 2015.
- ❑ Honours Supervision: Christopher Heard (UQ, School of Economics), “Capacity Expansion under Access Regulation,” 2014.
- ❑ Master Supervision: Sam Forbes (UQ, School of Economics), “Towards the Market Design of Two Congestion Trading Schemes,” 2014.
- ❑ Ph.D. Panel: Octavio Dame (EPGE/FGV): “Share Bidding Auctions, Sliding Scale Royalty rates and the new Brazilian framework for the Pre-Set Areas,” 2014.
- ❑ Ph.D. Supervision: Craig Malam (UQ, School of Economics), “Competition Issues in Two-Sided Markets: An Application to the Media Industry,” 2013.
- ❑ Ph.D. Supervision: Fernando Camacho (UQ, School of Economics), “Regulation and Investment,” 2011.
- ❑ Ph.D. Supervision: See Fong (UQ, School of Economics), “The Performance of the Malaysian Electricity Supply Industry and the Effects of Competition Policy,” 2011.
- ❑ Honours Supervision: Steven Hamilton (UQ, School of Economics), “The Economics of Aged Care,” 2009.
- ❑ Honours Supervision: David Rogers (UQ, School of Economics), “Price Determination in the Iron Ore Industry,” 2009.
- ❑ M.Phil. Supervision: Don Burt (UQ, School of Economics), “The Role of Energy Retailers,” 2009.
- ❑ Honours Supervision (with John Quiggin): Sheannal Obeyesekere (UQ, School of Economics): “Firm Interactions in the Presence of State Capture Opportunities,” 2009.
- ❑ Honours Supervision: Kathryn Mulhouse (UQ, School of Economics). “Incentives and Bargaining in the Pharmaceutical Benefit Scheme,” 2008.
- ❑ Honours Supervision: Tom Gole (UQ, School of Economics), “The Regulation of Taxis in SE Queensland,” 2007.
- ❑ Ph.D. Panel: Thanh Quang Le (ANU, School of Economics). Topic: “R&D Competition and Growth,” 2007.
- ❑ Ph.B. Supervision: Various students (ANU, mathematics and economics). Topic: Bidding Behaviour in Auctions, 2004.
- ❑ Honours Supervision: Gerard Burg (ANU). Topic: “For the Good of the Game: Competitive Reforms for European Football,” 2003.
- ❑ MEc Supervision: Heleno Pioner (EPGE/FGV). Dissertation Topic: “Numerical Techniques in Antitrust Economics with Applications to some Recent Cases in Brazil,” 2003.

- ❑ MEc Supervision: Fernando Camacho (EPGE/FGV). Dissertation Topic: “The Regulation of the Gas Industry in Brazil,” 2002.
- ❑ Ph.D. panel for Takaharu Eto, ANU, 2002.
- ❑ Honours Supervision: Sean Alexander (ANU). Topic: “Network Competition and the Australian Mobile Services Market,” 2002.
- ❑ Honours Supervision: Brook Dixon (ANU). Topic: “Information Trading Relationships,” 2002.
- ❑ Honours Supervision: Paul Barnsley (ANU). Topic: “Modelling the NBA Draft: Determining the Expected Value of the 1st Overall Picks,” 2001.
- ❑ Ph.D. Supervision: Joisa Companher Dutra (EPGE/FGV). Dissertation Title: “Three Essays on Hybrid Auctions,” 2001.
- ❑ MEc Supervision: Adriana Perez (EPGE/FGV). Dissertation Topic: “Federalism: A Principal-Agent Model,” 2001.
- ❑ MEc Co-Supervision: Samantha Dart (EPGE/FGV). Dissertation Topic: “Participation Constraints in the Brazilian Public Pension Fund”, 2001.
- ❑ Honours Supervision: John Asker (ANU) — University Medallist. Topic: “Bidding up, Buying out and Cooling-off: An examination of auctions with withdrawal rights,” 1998.
- ❑ Ph.D. Panel: Humberto Moreira (IMPA). Dissertation Title: “Optimization Problems in Economics,” 1996.
- ❑ Honours Supervision: Jon Cheshire (ANU) — University Medallist. Topic: “An Empirical Study of the Auction and Secondary Markets for Australian 13-Week Treasury-Notes,” 1995.

ADMINISTRATION AND ENGAGEMENT

University Administration

- ❑ Head, School of Economics, University of Queensland (UQ), January 2009-January 2015.
- ❑ Board Membership
 - Academic Board, UQ, January 2009 – January 2015.
 - ACORE, from 2004 to 2006.
 - Regulatory Institutions Network (Regnet), from 2004 to 2006.
- ❑ Membership of Committees
 - Student Survey Project Steering Committees, UQ, 2013.
- Selection Committee to appoint Dean of the Faculty of Business, Economics and Law, University of Queensland, 2012.
 - Committee of Review, UQ, 2011-2014.
 - UQ Latin American Reference Group (2009/2010).
- UQ Vietnam Reference Group (from 2009).
- Member and Chair, Selection Committees for Levels B to E and a range of Professional staff, University of Queensland, School of Economics, 2006-2013.
- Marketing Committee, University of Queensland, School of Economics, from 2007.
- Executive Committee, Member and Chair, University of Queensland, School of Economics, from 2006.
- Evaluation of tenure and promotion, Oxford University, Melbourne University, University of New South Wales, Tulane University, University of Saskatchewan, and the University of Sydney.
- Selection Committee, Visiting Professorship (Level E), Economic Theory Centre, University of Melbourne, 2005.
 - Selection Committees for levels B to E, ACORE, ANU, 2003.
 - Selection Committees for levels B and C, School of Economics, ANU, 2004.
 - Research Advisory Committee, Faculty of Economics and Commerce, ANU, 2003-2006.
 - Committee to define majors, School of Economics, ANU, 2002.
 - Selection committees for levels B and C, School of Economics, ANU, 2002.
 - Committee to devise a point system for allocation of research funds based on publications, School of Economics, ANU, 1995.
 - Ph.D. Restructuring Committee (EPGE/FGV), 2000.
 - Visitor's Committee (EPGE/FGV), 2000.
 - Strategic Planning, FGV Management, 2000.
- ❑ Previous Administrative Responsibilities
 - Foundation Director, ACORE, ANU, December 2003 – April 2006.
 - Deputy Head, School of Economics, ANU, 2003.
 - Interim Deputy Director, ACORE, 2003.
 - Visitor Coordinator, School of Economics, ANU, 1996-2003.
 - Honours Coordinator, School of Economics, ANU, 2001-2002.

Professional Affiliations and Appointments

- ❑ Deputy Chair, Queensland Competition Authority.
- ❑ President, Economic Society of Australia (QLD).
- ❑ Member, Central Council, Economic Society of Australia.
- ❑ Elected Member for Australasian Standing Committee of the Econometric Society.

- ❑ Excellence in Research for Australia, Member of the Economics and Commerce Panel, 2015, Australian Research Council.
- ❑ Senior Research Fellow, Australian Institute of Business and Economics.
- ❑ Visiting Professor at the University of Oxford, ISTCE (Portugal), University of Gothenburg, Universidad Nacional de Chile, Fundacao Getulio Vargas, the University Melbourne and at the Australian National University, 2015.
- ❑ Centre for Market Design, University of Melbourne, Board Member, 2014.
- ❑ Centre for Policy and Market Design, University of Technology Sydney, Fellow, from 2014.
- ❑ Economic Design Network, 2007-2009. Member of the Executive Committee.
- ❑ National Tax Forum, Canberra, 4-5 October 2011.
- ❑ Australian Economic Society
 - Vice President (Queensland Branch) – from 2011 to 2015.
 - Editorial Board Member (Economic Record and Economic Papers) – from 2007.
- ❑ Public Economic Theory Association
 - Associate Editor (Journal of Public Economic Theory) – from 2007.
- ❑ Western Economic Association.
- ❑ Graduate of the Australian Institute of Company Directors.

Selected Consulting and Applied Work

The Australian Capital Territory Government

- ❑ Advice on procurement of a smart city network.

Australian Energy Market Commission

- ❑ Advice on auctions of access transmission rights.

Geraldton Fishermen's Co-operation Ltd.

- ❑ Advice on auction design for the sale of live lobsters.

Port of Brisbane

- ❑ Forecasting container traffic and motor vehicle imports.

Department of Resources, Environment and Tourism, Federal Government

- ❑ Advice on the design of auctions for the allocation of oil and gas exploration licences.

Department of Climate Change, Federal Government

- ❑ Selected as part of panel of advisers assisting the Australian Government with the design and implementation of Australia's Emissions Trading Scheme (ETS).

Defence Materiel Organisation

- ❑ Advice on defence procurement.

Queensland Competition Authority.

- ❑ Advice on the impact of the form of regulation on risk and the cost of capital.
- ❑ Advice on capacity expansion and access pricing for rail and ports.
- ❑ Advice on incentive regulation.
- ❑ Advice on asset valuation matters.
- ❑ Advice on uncertainty and regulation.
- ❑ Advice on the allocation of common costs.

Victorian Government

- ❑ Evaluation of timber auctions.
- ❑ Advice on auction design.

Fuel Subsidy Commission of Inquiry – Queensland Government

- ❑ Provided expert report for the inquiry.

Independent Pricing and Regulatory Tribunal of New South Wales

- ❑ Advice on market design issues in the port sector.

Australian Competition and Consumer Commission

- ❑ Application of auction theory to regulatory environments.
- ❑ Market design issues in digital TV.

CRA International Assignments

- ❑ Competition and regulatory issues in the following sectors: defence, telecommunications, energy and Water, transport, pharmaceuticals, health, banking and insurance, and the dairy industry.

Productivity Commission

- ❑ Referee’s report for Staff Paper: “The Role of Auctions in Allocating Public Resources.”

Network Economics Consulting Group (NECG)

- ❑ Advice on mergers cases.
- ❑ Advice on regulatory matters in telecommunications, energy and transport.
- ❑ Advice on competition policy issues.
- ❑ Advice on auction design.

Vodafone Hutchison Australia

- ❑ Application of auction theory to regulatory environments.

The Australian Communications Authority

- ❑ Provided advice on auctioning of phone numbers.

Others

- ❑ BZW Australia: Game Theory and Access.
- ❑ Furnas (Brazil): A privatization model for Furnas.
- ❑ Ministry of Finance (Brazil): A Review of Government Procurement.
- ❑ ANEEL (Brazil): Electricity Market Design: Theory and Two Relevant Experiences.
- ❑ UNDP (United Nations Development Program): “The impact of the Uruguay Round of GATT negotiations on the Brazilian exports.”

Media

- ❑ Interview to Singapore’s Straits Times on the economic impact of the Australian election, June 2016. Available at <http://www.straitstimes.com/asia/australianz/boost-business-or-education-aussie-voters-must-decide>.
- ❑ Profile of Treasurer and Shadow Treasurer written for the Conversation. April 2016. Available at <https://theconversation.com/interactive-profiles-of-the-cabinet-and-shadow-cabinet-56903>.
- ❑ Iron ore still has an important role to play in Australia’s economy. The Conversation. March 2016. Available at <https://theconversation.com/iron-ore-still-has-an-important-role-to-play-in-australias-economy-54476>.
- ❑ Interview to GovernmentNews on PPPs. Published in January 2016. Available at <http://www.governmentnews.com.au/2016/01/public-private-partnerships/>.

- ❑ Increasing GST to cut income tax would be a zero sum game. The Conversation, November 2015.
- ❑ Why Labor should come to the party on the competition review, The Conversation, October 2015.
- ❑ Interview on Turnbull's election, The Conversation, September 2015.
- ❑ FactCheck: Is the GST as efficient but less equitable than income tax? The Conversation, July 2015.
- ❑ Press conference on the establishment of an iron ore parliamentary inquiry – Reuters, The Australian, Fairfax, May 2015.
- ❑ TV Interview to ABC 24 hours and radio interview to ABC Rural on the establishment of an iron ore parliamentary inquiry, May 2015.
- ❑ Competition the wrong test for iron ore inquiry, The Conversation, May 2015.
- ❑ Why Twiggy Forrest should have got behind a super profits tax, The Conversation, April 2015.
- ❑ Interview to Radio Australia, Budget or Bust, 13 February 2015, available at <https://radio.adelaide.edu.au/budget-or-bust/>.
- ❑ Governments paying price for 'do it now or die' approach to reform, The Conversation, February 2015.
- ❑ Interview for the ABC Radio, Drive with Rob Mailer Program, on the lease of assets in Queensland, 21 January 2015.
- ❑ Iron Ore race to the bottom not in the interests of Australians, The Conversation, November 2014.
- ❑ Making the case for selling off Queensland's Power Assets, The Conversation, October 2014.
- ❑ Interview for the Conversation on the proposed break-up of the NBN, October 2014.
- ❑ Hockey's fairness lecture won't help him fix the budget, The Conversation, June 2014.
- ❑ Interview for the Conversation on the federal budget, May 2014.
- ❑ Capital Recycling plan good in theory, difficult in practice, The Conversation, May 2014.
- ❑ Interview for Canal Energy on market design in electricity in Brazil, www.canalenergia.com.br, January 2014.
- ❑ Abbott's 'open for business' honeymoon is over, The Conversation, November 2013.
- ❑ Business lobby yearns for a long-term view, but offers a contradictory wish list, The Conversation, April 2013.
- ❑ Applying new thinking to alleviate rural debt - See more at: <http://www.beefcentral.com/news/news-archive/article/2564/#sthash.i206x653.dpuf>. December 2012.
- ❑ Why setting the floor price for digital dividends auction is the right approach, The Conversation, November 2012.
- ❑ Spotlight back on PPPs as BrisConnections falters, The Conversation, November 2012.
- ❑ The 'curse' of the resources boom: could our wealth be our ultimate weakness?, The Conversation, September 2012.
- ❑ "Public Private Partnerships", Australian Policy Online, 23 July 2012.
- ❑ Interview for Radar Magazine, Comparing Australian and Brazilian economies, July 2012. (www.redarmagazine.com.au)
- ❑ Interview for Channel 10 news on the decrease in the number of ATM cash withdrawals, June 2012.
- ❑ Interview for the Australian Financial Review on the tax treatment of losses, 25 November 2011.
- ❑ Interview for the Australian Financial Review on the introduction of an Allowance for Corporate Equity and on the tax treatment of losses, 27 October 2011.
- ❑ Reduce the corporate tax rate? Not so fast, 27 October 2011, published on theconversation.edu.au.
- ❑ Interview for the Australian Financial Review on the National Tax Forum, 6 October 2011.

- ❑ Interview for ABC (Southern Queensland and Brisbane) on the National Tax Forum, October 2011.
- ❑ Interview for freshfruitportal.com on the impact of exchange rate on fruit exports, February 2011.
- ❑ Interview to the BBC News on the mining tax. 24 June 2010. Available at <http://www.bbc.co.uk>.
- ❑ “Climate Insurance.” Brisbane Business News Vol. 2. 9 October 2009.
- ❑ Interview for 612 ABC Brisbane on the sale of assets in Queensland. 13 October 2009.
- ❑ “Nothing Exceeds Like Success.” Australian Policy Online. 9 August 2009.
- ❑ “Plastic Policies” (with Rohan Alexander). Australian Policy online. 25 May 2009.
- ❑ “Subsidising fuel won’t deal with long-term problems”. Australian Policy online. 19 June 2008. Available at <http://www.apo.org.au>.
- ❑ Interviews for Drive 936 ABC Hobart Radio, June and July 2008, on fuel prices and competition.
- ❑ Interview for ABC Radio National’s Rear Vision, 27 August 2006, on the sale of Telstra. Transcript available at <http://www.abc.net.au>.
- ❑ Interview for ABC Radio World Today program on the award of the 2005 Nobel Prize in Economics to Robert Aumman and Thomas Schelling. Transcript available at <http://abc.net.au>.
- ❑ “Dispute to affect costs of flying to Sydney.” Canberra Times, 8 June, 2005.
- ❑ “Give colluders and inch, they’ll take a mile.” AFR, 24 February 2005.
- ❑ “Power pricing review must look beyond consumer.” AFR, 4 February 2005.
- ❑ Interview for the AFR on the establishment of the Australian Centre of Regulatory Economics, 31 July 2003.
- ❑ Interview for the Bulletin on the use of auctions in the sale of collectibles, 16 July 2003.
- ❑ Work on the economics of corruption has attracted attention in Brazilian media with interviews published in “O Globo.” (18 March 2001) and a major feature on the news site www.no.com.br.
- ❑ Interview on the use of auction in the real estate market published in The Weekend Australian. (25-26 October 1997).

Submissions to public inquiries

- ❑ Submission to the Productivity Commission Review of the Gas Access Regime (with L. Collis), April 2004.
- ❑ Submission to the Department of Climate Change on its Carbon Pollution Reduction Scheme Green Paper (with John Quiggin and Liam Wagner), July 2008).
- ❑ Open Letter on the sale of assets in Queensland, November 2009.
- ❑ Submission to the Department of Health and Ageing on its “Review of the Funding Arrangements for Pathology Services” Discussion paper, April 2010.
- ❑ Open letter on the Resources Super Profits Tax, May 2010.
- ❑ "Improving the Taxation of Capital Income." Statement of priorities for tax reform at the National Tax Forum in Canberra, October 2010.
- ❑ Submission to the Business Tax Working Group on the Allowance for Corporate Equity, September 2012.

RESEARCH

Grants

- ❑ ALA Fellowship, “Developing Best Practice Economic Regulation under Technological Innovation (Brazil).” Visit by Professor Dutra (Center for Regulation, FGV) from 31 January to 3 March 2013. (\$12,518)
- ❑ ARC Discovery Grant 2012/2014: “Games and Decisions with Bounded rationality: Theory and economic implications” (jointly with Simon Grant, Jeffery Kline, Mamoru Kaneko and John Quiggin). (\$351,515)
- ❑ ARC Discovery Grant 2006/2008: “The Consistency of Price Regulation of Infrastructure Businesses across Australian Jurisdictions” (jointly with Bob Breunig). (\$255,000)
- ❑ ARC Discovery Grant 2005/2007: “Economy wide consequences of regulation and privatisation policy regimes” (jointly with Rod Tyers). (\$382,000)
- ❑ ARC, 2000/2003, “To reveal or not to reveal: An investigation into the role of secret reserve prices in auctions,” (jointly with Simon Grant). (\$194,000)
- ❑ ARC, 1999 calendar year: “Uniform versus Discriminatory-Price Treasury Bill Auctions.” (\$9,600)
- ❑ ARC, 1995/1996: “An Empirical Investigation of Prices in Wool Auctions,” (jointly with Chris Jones). (\$13,000)

Publications – Refereed Academic Journals

- ❑ Emissions Abatement R&D and Dynamic Competition in Supply schedules (with Jorge Pereira). Forthcoming in the *Journal of Public Economic Theory*, 2017.
- ❑ Dynamic and static asking prices in the Sydney housing market (with P. Khezr). *Economic Record* 92(297): 209-221, 2016.
- ❑ Price Regulation and the Incentives to Pursue Energy Efficiency by Minimising Network Losses (with J. Dutra and X. Zheng). *Energy Journal* 37(4), 2016.
- ❑ Introduction to the Special Issue on Public-Private Partnerships (with D. Martimort), *Journal of Public Economic Theory* 17(1): 1-3, 2015.
- ❑ Default and Renegotiation in PPP Auctions (with Matthew Ryan). *Journal of Public Economic Theory* 17(1): 49-77, 2015.
- ❑ Public-Private Partnerships for Transport Infrastructure: Some efficiency risks (with M. Ryan). *New Zealand Economics Papers* 49(3): 276-295, 2015.
- ❑ Assessing the Impact of Blended Learning on Student Performance (with C. Sherwood and D.W. Kwak). *Economics Record* 91(292): 91-106, 2015.
- ❑ Network Regulation and Regulatory Institutional Reform: Revisiting the Case of Australia (with R. Nepal and T. Jamasb). *Energy Policy* 73:259–268, 2014.
- ❑ Optimal Access Regulation with downstream competition (with Tina Kao and John Quiggin). *Journal of Regulatory Economics* 45:75-93, 2014.
- ❑ Price regulation and the Cost of Capital (with F Camacho). *Annals of Public and Cooperative Economics* 84 (2): 139 – 158, 2013.
- ❑ More competitors or more competition? Market concentration and the intensity of competition (with John Quiggin) *Economics Letters* 117(3): 712-714, 2012.
- ❑ An Empirical Investigation of the Merger Decision Process in Australia (with R. Breunig and K. Tan) *Economic Record* 88: 456-475, 2012.
- ❑ The National Tax Forum: The Evolving Tax Reform Agenda (with Harry Clarke). *Economic Papers* 31 (1): 1-2, 2012.
- ❑ The Business Tax Reform Agenda. *Economic Papers* 31 (1): 3-7, 2012.
- ❑ Embedded Incentives in the Funding Arrangements for Residential Aged Care in Australia (with S. Hamilton). *Economic Papers* 30 (3): 326-340, 2011.

- ❑ Testing Regulatory Consistency (with B. Breunig). *Contemporary Economic Policy* 31 (1): 60-74, 2012.
- ❑ Markets for Influence (with J. Quiggin). *International Journal of Industrial Organisation* 28: 307-310, 2010.
- ❑ Good and Bad Consistency in Regulatory Decisions (with C. Roessler). *Economic Record* 86 (275): 504-516, 2010.
- ❑ Welfare Enhancing Mergers under Product Differentiation (with T. Kao). *Manchester School* 78(4): 290-301, 2010.
- ❑ Endogenous Merger under Multi-Market Competition (with T. Kao). *Journal of Mathematical Economics* 45: 817-829, 2009.
- ❑ Coasian Dynamics in Repeated English Auctions (with M. Ryan). *International Journal of Game Theory* 38: 349-366, 2009.
- ❑ Access Pricing and Investment: A Real Options Approach (with F. Camacho). *Journal of Regulatory Economics* 36: 107-126, 2009.
- ❑ Retail Price Regulation and the Option to Delay (with F. Camacho). *Annals of Public and Cooperative Economics* 80(3): 451-468, 2009.
- ❑ Consistent Regulation of Infrastructure Businesses: Some Economic Issues. *Economic Papers* 28(1), 2-10, 2009.
- ❑ Grandfathering and greenhouse: the role of compensation and adjustment assistance in the introduction of a carbon emissions trading scheme for Australia (with J. Quiggin and L. Wagner). *Economic Papers* 28(2), 82-92, 2009.
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- ❑ Why Do Bidders Drop Out from a Sequential Auction, (with Richard Engelbrecht-Wiggans). *Revista Brasileira de Economia* 55(1), 33-51, 2001.
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- ❑ Sustainable Clubs under Variable Participation (with Emilson Silva), *Brazilian Review of Econometrics* 19(2), 405-419, 1999.
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- ❑ Cointegration Tests of Purchasing Power Parity for the Brazilian Economy: 1870-1906 (with Marcelo Resende) *Estudos Econômicos* 26(1), 51-62, 1996.
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- ❑ Sequential Auctions with Delay Costs: A Two-Period Model, *Economics Letters* 42, 173-178, 1993.
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- ❑ Leilões sequenciais com custo de permanência *Brazilian Review of Econometrics* 12(2), 125-165, 1992.

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- ❑ An Introduction to Auction Theory (with Paulo Monteiro). Oxford University Press, January 2005; www.oup.com. Second (paperback) edition published in 2008.
- ❑ The Microeconomics of Corruption: The Classical Approach, in *Corruption Prevention: Theory and Practice*, Ed. Peter Larmour, Asia Pacific Press, 2001.
- ❑ Market Design for New Leaders. In *So You want to be a leader*. Edited by P. Crisp, 2015. See <http://www.soyouwanttobealeader.com/>.
- ❑ Regulação e Concorrência em Concessões Rodoviárias no Brasil (with Joisa Dutra and Patrícia Sampaio) (*Regulation and Competition in the tender of highway concessions in Brazil*) in A.

Pinheiro and C. Frischtak, *Gargalos and Soluções na Infraestrutura de Transportes (Bottlenecks and Solutions for Transport Infrastructure)*, FGV Editora, 2014.

Publications — Policy Pieces

- ❑ The role of competition in Australian defence procurement (with Henry Ergas). *The Melbourne Review*, Vol. 3(1), 41-48, May 2007.
- ❑ Guest Editor's Foreword, Special Issue on Vertical Integration on Network Industries, *Review of Network Economics*, Vol. 4 (1), March 2005.
- ❑ The Economics of Weapons Systems Acquisitions (with Henry Ergas). *Agenda* 11(3), 247-264, 2004.
- ❑ Tendering and Bidding for Access: A Regulator's Guide to Auctions (with Rohan Pitchford and Andrew Wait), *Australian Journal of Management* 28(3), 345-370, December 2003.
- ❑ Improving Selling of Treasury Bills? *Agenda* 7(2), 143-152, 2000.
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- ❑ Entendendo Leilões ("Understanding Auctions"). *Conjuntura Econômica* 52(3), 1998.
- ❑ Privatização no Setor Elétrico: A Estratégia Australiana ("Privatising the Electricity Sector: The Australian Model") *Conjuntura Econômica* 50(6), 1996.
- ❑ O Acesso à INTERNET no Brasil: Aspectos Econômicos (The Economics of Internet Access in Brazil) *Conjuntura Econômica* 49(9), 1995.
- ❑ Como Leiloar Canais de Rádio e Televisão ("How to Auction Radio and TV Licences") *Conjuntura Econômica*, 49(4), 1995.

Publications — Survey Articles

- ❑ Multiple-Unit Auctions with Single Demand: A Survey, *Brazilian Review of Econometrics* 18(2), 1-32, 1998.
- ❑ Uma Introdução à Teoria dos Leilões, ("An Introduction to Auction Theory") *Brazilian Review of Econometrics* 14(2), 231-250, 1995.
- ❑ Repeated Games Played by Finite Automata: A Survey, *Brazilian Review of Econometrics* 12(1), 93-111, 1992.

Publications — Book Reviews

- ❑ "Trillion Dollar Baby" by Paul Cleary, Black Inc. Books, 2016. *The Conversation*, January 2017. Available at <https://theconversation.com/book-review-trillion-dollar-baby-67141>.
- ❑ "The Failure of Judges and the Rise of Regulators" by Andrei Shleifer, MIT Press, 2012. *Economic Record* 89(287), 577-580, 2013.
- ❑ "Individual Behaviour, Social Interactions and Crime," a review of *Deliquent-Prone Communities* by D. Weatherburn and B. Lind, Cambridge University Press, 2001. *Agenda* 8(4), 369-372, 2001.
- ❑ *Mathematics for Economic Analysis*, by K. Sydsaeter e P. J. Hammond (Prentice Hall, 1995); *Mathematics for Economics*, by M. Hoy, J. Livernois, C. McKenna, R. Rees and T. Stengos (Addison-Wesley, 1996); *Mathematics for Economists*, by C. P. Simon and L. Blume (W.W. Norton, 1994), and *Mathematical Economics*, by J. Baldani, J. Bradfield and R. Turner (Dryden Press, 1996). *Brazilian Review of Econometrics* 17(2), 1997.
- ❑ *Latin America's Economic Future*, eds. Graham Bird and Ann Helwege (Academic Press, London, 1994), *Canadian Journal of Development Studies* XVII (3), 555-558, 1996.
- ❑ *Multilateral Development Banks*, a review of *Multilateral Development Banks: The Caribbean Development Bank*, volume 3, by Chandra Hardy, The North-South Institute, 1995, and *Multilateral Development Banks: The Inter-American Development Bank*, volume

- 4, by Diana Tussie, The North-South Institution, 1995. *Canadian Journal of Development Studies* XVII (2), 344-347, 1996.
- ❑ Mathematics for Economists, by C.P. Simon and L. Blume (W.W. Norton, New York, 1994). *Economic Record* 71, 106-108, 1995.
 - ❑ Equilibrium Theory in Infinite Dimensional Spaces, eds. M. A. Khan and N. C. Yannelis, New York: Springer-Verlag, 1991, in *Brazilian Review of Econometrics* 13(1), 105-111, 1993.

Manuscripts under Preparation/Submission

- ❑ Dealership Equilibria in Oligopoly (with T.Kao and J.Quiggin).
- ❑ Regulatory behaviour under threat of court reversal (with Magnus Söderberg and Miguel Santolino). Resive and Resubmit, the *Review of Law and Economics*.
- ❑ Sharp and Diffuse Incentives in Contracts (with John Quiggin).
- ❑ Reduced intensity of competition makes mergers profitable (with John Quiggin).
- ❑ Inferring the strategy space from market outcomes (with John Quiggin).
- ❑ Auctions with an Asking Price (with P. Khezr). Submitted to *International Journal of Game Theory*.
- ❑ Electricity Market Design in Brazil: An Assessment of the 2004 Reform (with J. Dutra). Submitted to *Utilities Policy*.
- ❑ Regulatory Incentives for a Low-Carbon Electricity Sector in China (with X. Zheng).
- ❑ The Dynamics of Bank Location Decision in Australia (with C. Heard and A. Rambaldi). Revised and Resubmitted to the *Australian Journal of Management*.
- ❑ Small Energy Markets, Scattered Networks and Regulatory Reforms: The Australian Experience (with R. Nepal). Submitted to *Economic Papers*.

Seminar and Conference Presentations

2016: The University of Queensland Industrial Organisation Workshop, ANU Workshop in honour of Richard Cornes

2015: The University of Melbourne, SAET Conference (Cambridge University), WEAI Conference (Honolulu), University of Gothenburg, ISCIE (Portugal), UCP (Lisboa), UCP (Porto), Universidad de Chile.

2014: University of Technology Sydney, 2nd ATE Symposium on Antitrust Economics and Competition Policy (UNSW).

2013: Society for Advancement of Economic Theory-SAET (Paris), Shandong University (Jinan).

2012: FGV/EPGE (Rio de Janeiro), University of Calcutta, Universidade Católica de Brasília (UCB), Association for Public Theory Conference (Taipei), Shandong University (Jinan), Econometric Society Australasian Meeting (Melbourne), Association for Public Economic Theory Workshop (Brisbane), Society for Advancement of Economic Theory-SAET (Brisbane).

2011: Monash University, Deakin University, University of Sao Paulo (USP), Universidade Federal do Rio Grande do Sul (UFRGS), Universidade Federal de Santa Catarina (UFSC), Society for Advancement of Economic Theory-SAET (Portugal), Far East Econometric Society Meetings (Seoul), Singapore Economic Review Conference.

2010: Brookings/CAMA/Lowy Conference on the Economics of Infrastructure, The University of Hong Kong, National Bureau of Economic Research (NBER)-Japan, National University of

Singapore, IPEA/Brazil, IMPA, FUCAPE Business School, SAET Meeting (Singapore), NTU (Singapore), ANU (RSE). Discussant at the ANU/UQ/UWA PhD Conference at the ANU.

2009: Instituto de Pesquisa Economica Aplicada (IPEA), Instituto de Matematica Pura e Aplicada (IMPA), Australian National University (RSSH and School of Economics), PUC-Chile, Universidad de Chile (Joint CMM and CEA seminar), Auckland University (Economics) and the University of Melbourne (Economics).

2008: Invited speaker: 52nd Australian Agricultural and Resource Economics Society Meetings. Speaker: PET 2008 Conference in Seoul, Deakin University, EARIE 2008 in Toulouse, IAEE 2008 Asian Conference in Perth, and CRNI Conference in Brussels.

2007: Invited speaker: Australian Law and Economics Conference, Australian Econometric Society, Economic Design Network Health Economics Forum, Expert Workshop on Auctioning Greenhouse Gas Permits. Seminar Presenter: Melbourne University, Department of Economics.

2006: Presenter: Deakin University, ANU (ACORE), Australasian Meetings of the Econometric Society 2006, CRA International Off-Site, Latrobe and Auckland Universities. Discussant, PhD Conference, ANU. Keynote address at the 2007 Australasian Law and Economics Conference.

2005: Chair, Discussant and Presenter: Australian Economic Theory Meeting (Auckland). Organiser and Presenter, ACORE Forum on Introducing Competition in Network Industries (ANU); University of Adelaide, Department of Economics. University of Queensland, Department of Economics. ACCC Regulatory Economics Conference; Australian Industry Economics Conference; 2005 World Meeting of the Econometric Society (University College-London); CRA International Internal Seminars; The 12th Biennial Copyright Law and Practice Symposium; The 3rd South Australian Trade Practice Workshop.

2004: Organiser, Chair and Presenter: Price Cap Forum (ANU); ACORE Seminar, Melbourne, ANU House; University of Sydney; RSSH (ANU); Discussant and Chair: Australian Economic Theory Workshop (Melbourne University). Discussant: The Performance of Air Transport Markets Conference, ANU. Discussant, PhD Conference, ANU.

2003: University of Melbourne; EPGE/FGV; PUC/RJ; Australian National University; Australian Economic Theory Workshop (University of Sydney); Australasian Meeting of the Econometric Society (UNSW); International Industrial Organization Conference, Boston. Discussant: International Industrial Organisation Conference, Boston; National Workshop of the Economics and Environment Network (ANU) Chairing: Australian Economic Theory Workshop; Australasian Meeting of the Econometric Society.

2002: Public Economic Theory Conference (Sorbonne, Paris); Australasian Meetings of the Econometric Society (QUT); University of Sydney; AGSM; University of Melbourne; ANU (School of Economics, RSPAS, Theory Workshop).

2001: Australasian Meetings of the Econometrics Society, Auckland New Zealand; University of Wollongong; Bond University; ANU (NCDS, RSSH, School of Economics, Theory Workshop); University of Sydney; Adelaide University, University of Queensland, University of New South Wales.

2000: North American Meeting of the Econometric Society (Boston); Brazilian Econometric Society Meeting, Brazilian Economic Association Meeting, Graduate School of Economics, FGV, Rio,

Brazil; Catholic University, Rio, Brazil; IPEA, Rio, Brazil; Universidade de São Paulo, Brazil; Public Economic Theory Meeting, University of Warwick.

1999: Institute for Pure and Applied Mathematics, Rio, Brazil; Australian Economic Theory Workshop (Melbourne University); ANU (School of Economics and RSES); Far Eastern Meeting of the Econometric Society (National University of Singapore); University of New South Wales; Meeting of the Brazilian Econometric Society.

1998: Australian Economic Theory Workshop (ANU); Australasian Econometric Society Meetings (ANU); Universidade de Brasilia, Brazil.

1997: University of Alabama (twice); Australian Economic Theory Workshop (University of Wollongong); University of Melbourne; North American Summer Meeting of the Econometric Society (CALTECH); University of Alabama; Institute for Pure and Applied Mathematics (twice), Rio, Brazil; Meeting of the Brazilian Econometric Society.

1996: Institute for Pure and Applied Mathematics, Rio, Brazil; ANU (Theory Workshop and RSES); Australasian Meetings of the Econometric Society (UWA); University of Sydney.

1995: North American Winter Meeting of the Econometric Society (Washington); ANU (School of Economics and Theory Workshop); New Zealand Economics Association Meeting; University of Southern California; University of California — Santa Barbara; Meeting of the Brazilian Econometric Society.

1994: Australian Economic Theory Workshop (University of Tasmania), Australasian Meeting of the Econometric Society (UNE); ANU (School of Economics).

1993: University of Illinois; North Carolina State University; Catholic University, Rio, Brazil; 19th Colloquium of Mathematics, Institute for Pure and Applied Mathematics, Rio, Brazil; Graduate School of Economics, FGV, Rio, Brazil; Universidade Federal Fluminense, Rio, Brazil.

Conference Organisation

2016: The Australasian Meeting of the Econometric Society (Sydney). Society for the Advancement of Economic Theory (Rio de Janeiro), Association for Public Economic Theory Meetings (Rio de Janeiro), and the Latin American Econometric Society Meetings (Colombia)

2015: Society for the Advancement of Economic Theory (Cambridge), and the Australian Conference of Economists (Brisbane).

2014: Association for Public Economic Theory Meetings (University of Washington).

2013: Association for Public Economic Theory Meetings (Portugal) and organising session at the Society for the Advancement of Economic Theory (Paris).

2012: Association for Public Economic Theory Workshop on Public Private Partnership (Chair), Society for the Advancement of Economic Theory (Chair), Australasian Meeting of the Econometric Society (Melbourne), Public Economic Theory Meeting (Taiwan).

2011: Public Economic Theory Meetings (Indiana University), SAET (Portugal).

2010: Public Economic Theory Meetings (Turkey).

2009: Public Economic Theory Meetings (Ireland).

2008: Public Economic Theory Meetings (Seoul); Selection Committee for the Brazilian Econometric Society Meetings.

2007: ESAM 07; Symposium on competition and regulatory economics; Public Economic Theory Meetings (Vanderbilt University).

2005: Forum on Introducing Competition in Network Industries (ANU). Organisational Committee for the Public Economic Theory Meeting in Hanoi.

2004: Forum on Price Cap Regulation, organizer; ACORE/Regnet/School of Economics Seminar Series, ANU, Organiser; Acore Public Lecturers Series, ANU, Organiser; Regulatory Economics for Economists, Organiser; Regulatory Economics for Non-Economists, Organiser; The Water Industry in Victoria: Working in the New Regulatory Regime, Organiser. NERA-MIGAS Workshop in Regulatory Economics, Organiser.

2003: Economic Theory Lunch (Workshop), ANU.

2002: Public Economic Theory Meeting, Sorbonne, Paris (Organisational Committee). Latin American Meeting of the Econometric, São Paulo (Organisational Committee); Economic Theory Workshop, ANU (Co-chair).

2000: Organised special Session on Auctions at the Latin America Economic Association Meeting, Rio, Brazil. Organisational Committee for the Meeting of the Brazilian Econometric Society.

1998: Australasian Meeting of the Econometric Society, ANU (Organisational Committee); Organised special Session on Auctions at the ESAM Meetings.

Refereeing

Research and Public Agencies and Publishers

Social Sciences and Humanities Research Council of Canada, Guggenheim Foundation; Deutsche Forschungsgemeinschaft (Germany); FTC (Portugal), FWO (Belgium), Bank of England; Australian Research Council; Academic Press; Oxford University Press; CNPQ (Brazil); Productivity Commission (Australia); and Routledge.

General Economics and Public Policy Journals

American Economic Review; Journal of Political Economy; European Economic Review; Economic Record; Canadian Journal of Economics; Pesquisa e Planejamento Econômico; Revista Brasileira de Economia; Agenda; Economics Bulletin; Australian Economic Papers; Australian Journal of Public Policy; Journal of Institutional and Theoretical Economics; Economic Inquiry and Economics Letters.

Economic Theory Journals

Theoretical Economics, Games and Economic Behavior; International Economic Review; Review of Economic Design; Brazilian Review of Econometrics; Mathematical Social Sciences; and International Journal of Game Theory.

Field Journals

Journal of Law and Economics, Rand Journal of Economics, International Journal of Industrial Organisation; Journal of Public Economics; Journal of Public Economic Theory; Energy Journal; Energy Policy, Journal of Regulatory Economics; Journal of Economic Behavior and Organization; Australian Journal of Agriculture and Resource Economics; Public Finance; and Social Choice and Welfare.

Editorial Responsibilities

- ❑ Co-editor of the **Economic Record** from January 2016.
- ❑ Editorial Board Member: **Economic Record**, 2008-2012; and **Economic Papers**, from 2009.
- ❑ Associate Editor, **Journal of Public Economic Theory**, from 2007.
- ❑ Associate Editor, **Mathematical Social Sciences**, 2010-2011.
- ❑ Associate Editor, **BE Asia Pacific Law and Economics Review**, from 2007.
- ❑ Guest Editor, Special Issue on Vertical Integration in Network Industries, **Review of Network Economics**, 2005.
- ❑ Guest Editor, special issue on Australia's National Tax Forum, **Economic Papers**, 2012.
- ❑ Guest Editor, special issue on Public Private Partnerships, **Journal of Public Economic Theory**, 2014.
- ❑ Associate Editor, **Brazilian Review of Administration**, from 2013.



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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Professor Flavio Menezes
19 Lomandra Place
Chapel Hill QLD 4069
f.menezes@uq.edu.au

23 December 2016
Matter 82602332
By Email

Dear Flavio

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.

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

Doc 59059475.4



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.

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.



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6 Communications

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
+61 3 9288 1416
+61 411 514 487
chris.jose@hsf.com

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 FLAVIO MENEZES _____



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;



- (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



HERBERT
SMITH
FREEHILLS

Flavio Menezes
19 Lomandra Place
Chapel Hill QLD 4069
f.menezes@uq.edu.au

6 March 2017
Matter 82602332
By Email

Dear Flavio

Confidential and Privileged

Instruction letter - Australian Competition Tribunal merger authorisation application

1 Introduction

We refer to the retainer letter that we sent you dated 23 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) What are the economic principles and methodologies relevant to analysing the competitive effects and total economic welfare effects of Tabcorp's proposed merger with Tatts (the **proposed merger**) on:
 - (1) auctions or tenders for State Government licences for retail wagering, lotteries or keno?
 - (2) the sale of State owned wagering businesses (such as RWWA)?
- (b) What would be the likely competitive effects and total economic welfare effects of the proposed merger on future processes for the award of State Government retail wagering licences (or in the case of Western Australia, the sale of RWWA), lotteries licences or keno licences?

3 Instructions

By way of background:

- 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));



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- 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 Flavio Menezes dated 5 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

pp

Paul Hughes
Partner
Herbert Smith Freehills

+61 2 9225 5697
+61 405 145 697
paul.hughes@hsf.com

Grant Marjoribanks
Partner
Herbert Smith Freehills

+61 2 9225 5517
+61 414 907 517
grant.marjoribanks@hsf.com

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

Tabcorp Holdings Limited
ACN 063 780 709

5 Bowen Crescent
Melbourne Australia 3004
GPO Box 1943
Melbourne Australia 3001

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



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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>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 style="list-style-type: none"> 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; 2 acquiring Control of the party or any material Subsidiary of the party; 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; 4 otherwise directly or indirectly acquiring or merging with the party or a material Subsidiary of the party; or 5 require the party to abandon, or otherwise fail to proceed with, the Transaction, <p>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>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="631 1826 1263 1880">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="631 1890 1235 1927">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	<p>any club, society, association, corporation, or body of persons (whether incorporated or unincorporated), which is established or operates for the purpose of:</p> <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

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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

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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



HERBERT
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EXECUTION

Deed Poll

Tabcorp Holdings Limited



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FREEHILLS

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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You should make your own independent assessment of any estimates and forward looking information contained in this Presentation.

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The statements in this Presentation are made only as at the date of this Presentation and the information contained in this Presentation has been prepared as of the date of this Presentation. The statements and the information remain subject to change without notice. The delivery of this Presentation does not imply and should not be relied upon as a representation or warranty that the information contained in this Presentation remains correct at, or at any time after, that date. No person, including Tabcorp, Tatts and their respective related bodies corporate, directors, officers, employees, agents, contractors, consultants and advisers accepts any obligation to update this Presentation or to correct any inaccuracies or omissions in it which may exist or become apparent.

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:

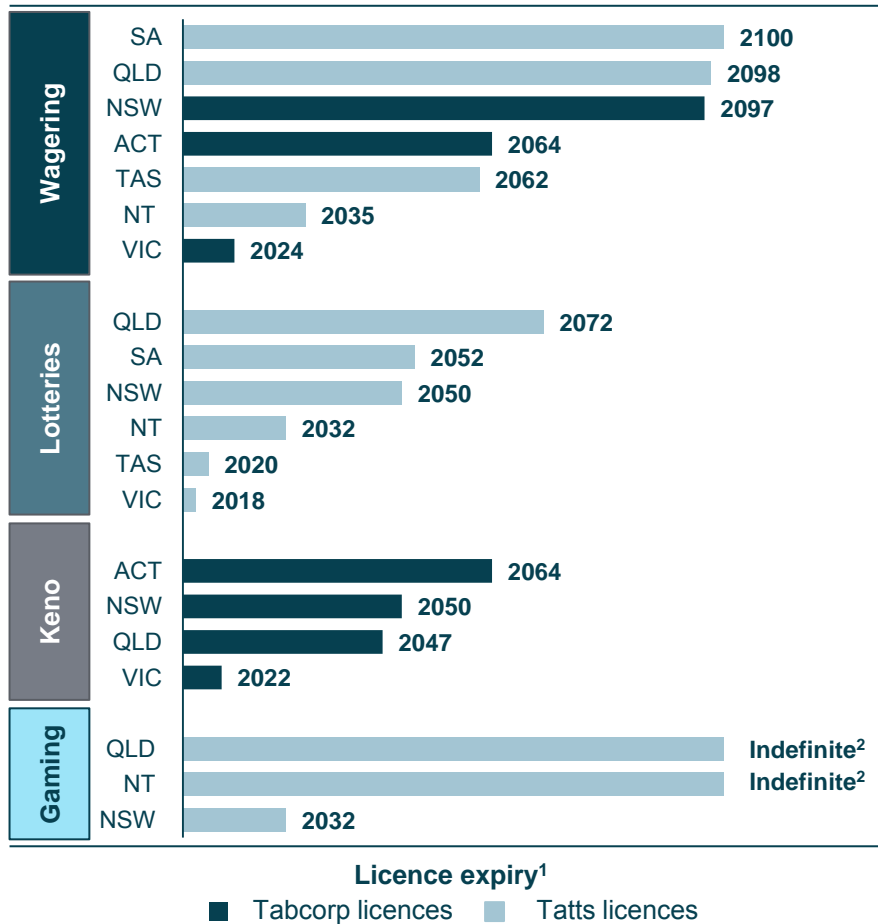
1 Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction

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



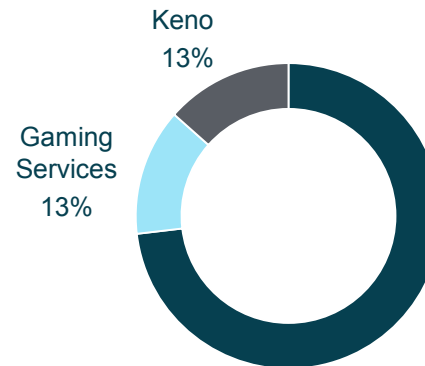
Source: Company filings

Notes:

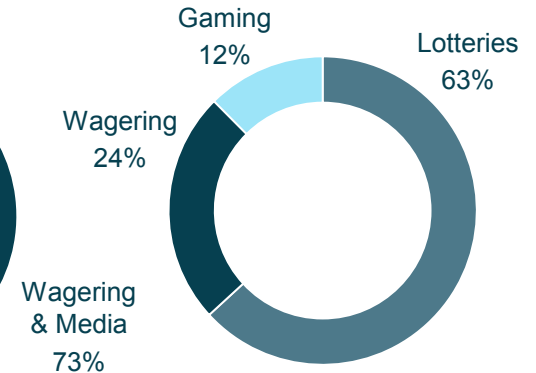
1 Tatts' NT Wagering licence expires in 2035, Tabcorp's NT Wagering licence in 2020; some licences (e.g. Tabcorp's VIC Wagering, Tatts' TAS Wagering) have renewal options post expiry; Tatts' SA Lotteries licence includes SA Keno; both Tatts and Tabcorp are accredited gaming operators in Australia

2 Indefinite rolling renewal capability

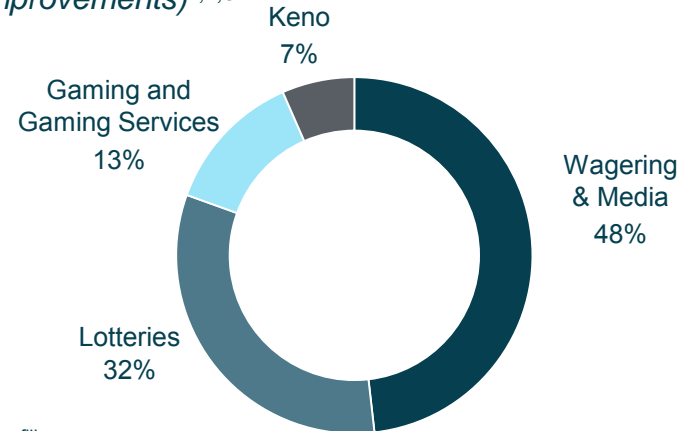
FY 2016 EBITDA—Tabcorp^{1,2}



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	   	✓	✓	✓	✓	✓	✓	✓		✓
Lotteries	    	✓	✓	✓	✓	✓	✓	✓		
Keno		✓	✓	✓	✓	✓				
Gaming and Gaming Services	  	✓	✓	✓	✓	✓	✓	✓	✓	
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:

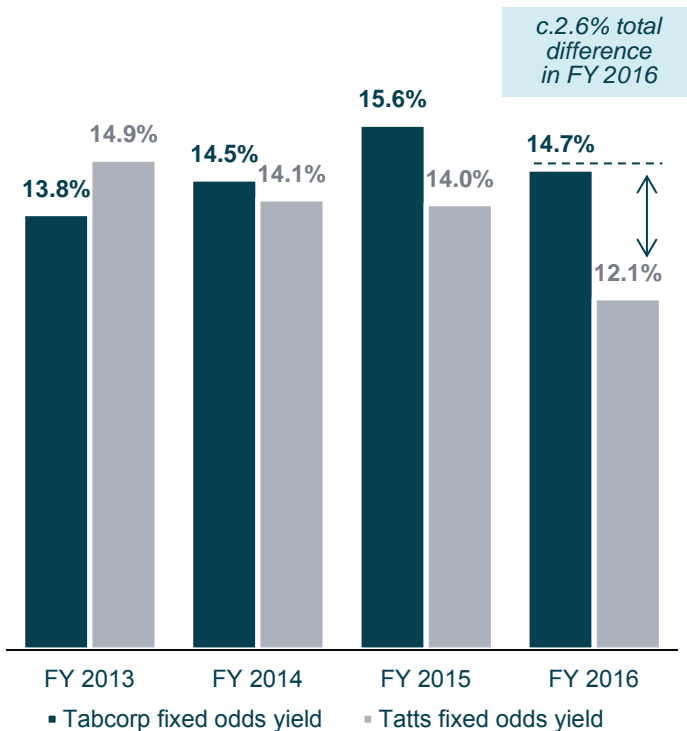
¹ Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction and based on Bloomberg consensus FY 2017 EBITDA estimates as at 18 October 2016, implying an EV/EBITDA multiple for Tabcorp of 9.1x, Tatts of 12.4x and an implied weighted average for the Combined Group of 10.7x

Summary of wagering performance optimisation under the TAB brand

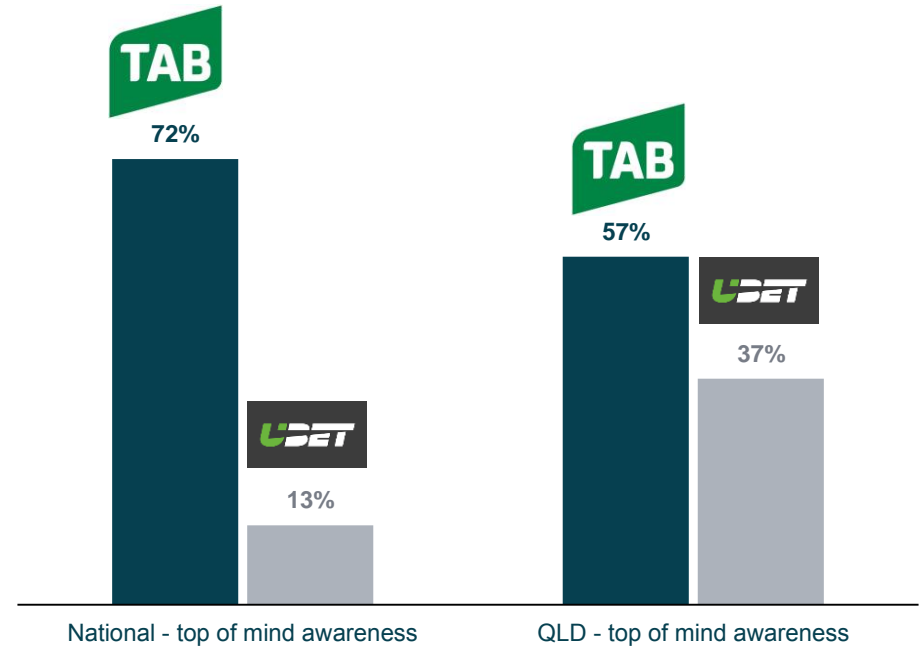
The Combined Group is expected to benefit from Tabcorp's fixed odds yield management capability and market leading TAB brand and product offering

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

**Key contacts****Tabcorp – Investors****Lachlan Fitt**

General Manager – Investor Relations and
Corporate Strategy

T: +61 2 9218 1414

E: lachlan.fitt@tabcorp.com.au

Tabcorp – Media**Nicholas Tzaferis**

General Manager – Corporate Affairs

T: +61 3 9868 2529

E: nicholas.tzaferis@tabcorp.com.au

Tatts – Investors**Giovanni Rizzo**

Head of Investor Relations

T: + 61 7 3877 1002

E: giovanni.rizzo@tattsgroup.com

Tatts – Media**Jim Kelly/Ross Thornton**

Domestique Consulting

T: +61 412 549 083/ +61 418 233 062

E: jim@domestiqueconsulting.com.au