

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: **Patrick Smith**
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Date: 9 March 2017



The document contains confidential information which is indicated as follows:

[Confidential to Tabcorp] [.....]
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Tabcorp Holdings Limited and Tatts Group
Limited
Expert witness statement of Patrick Smith

I. Introduction

1. This report has been prepared at the request of Herbert Smith Freehills, solicitors for Tabcorp Holdings Limited (“**Tabcorp**”). Herbert Smith Freehills have requested that I act as an independent expert to the Australian Competition Tribunal (the “**ACT**”), in relation to an application by Tabcorp to the Australian Competition Tribunal for merger authorization (the “**Proceedings**”) of its proposed merger (the “**proposed merger**”) with Tatts Group Limited (“**Tatts**”) (together, Tatts and Tabcorp are hereafter referred to as the “**parties**”). I set out below the specific questions that I have been asked to answer.
2. Exhibited to me at the time of signing this report and marked “Exhibit PS-1” is a bundle of documents. Also exhibited to me at the time of signing this report is a further bundle of documents marked “Confidential Exhibit PS-2”. Where in this report I refer to tabs in PS-1 or PS-2, I am referring to the tabs of Exhibit PS-1 and Confidential Exhibit PS-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 PS-2.
3. I am a Partner at RBB Economics, a firm that specialises in the economics of competition and regulation. I have extensive experience as an expert on economic issues in the racing, wagering and sports betting industry, and in testifying as an expert in a variety of court and arbitration forums. I was a testifying expert in the linked transactions, *Thoroughbred Horseracing Trust/Kenilworth Racing* and *Gold Circle/Kenilworth Racing*, which were considered by the South African competition authorities as the acquisition by the largest horseracing administrator and the exclusive tote operator in 7 out of 9 provinces in South Africa, Phumelela, of control over the horseracing administrator and exclusive tote operator in an 8th province, Kenilworth Racing. I have submitted expert reports in two further High Court actions and in further actions before the competition authorities, relating to collective pricing of the audio-visual coverage of horseracing, and

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the competitive effects of tote operators offering nationally and internationally commingled horse and sports betting products. I analysed the acquisition by Phumelela, a significant tote and fixed odds operator, of Supabets, a fixed odds sports betting operator. I have also analysed a number of potential alternative commercial arrangements which ultimately resulted in the reorganisation of the licensing of UK horseracing media rights. My credentials are provided at **Tab 1 of PS-1 [TBP.001.027.2028]**. My business address is 199 Bishopsgate, London, EC2M 3TY, United Kingdom.

4. I have read the Expert Evidence Practice Note (GPN-EXPT), which is contained at **Tab 2 of PS-1 [TBP.001.027.2039]**, and the Federal Court Harmonised Expert Witness Code of Conduct which is attached to the Engagement Letter from Herbert Smith Freehills dated 1 December 2016 at **Tab 3 of PS-1 [TBP.001.027.5183]**, and I confirm that I agree to abide by it. In particular, I understand that my duty in providing written reports and giving evidence is to assist the Court impartially on matters relevant to the area of my expertise, and that this duty overrides any obligation to the party from whom I have received instructions. I confirm that I have complied and will comply with this duty.
5. I have been instructed to answer the following questions concerning the proposed merger:¹
 - 5.1. What are the economic principles and methodologies relevant to assessing the competitive effects and total economic welfare effects of the proposed merger on the racing industry in Australia?
 - 5.2. What are the likely competitive effects and the likely effects on total economic welfare of the proposed merger on the racing industry in Australia?

¹ See 'Instruction letter (Patrick Smith) – 6 March 2017', page 1 (**Tab 7 of PS-1 [TBP.001.029.0005]**).

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6. In the process of producing this report I have reviewed and relied on the Assumptions provided to me, and listed at **Tab 1 of PS-2 [TBP.001.027.1974]** is a version of those assumptions in which the confidentiality markings have been updated (“**Assumptions**”), and the documents provided to me by Herbert Smith Freehills and listed at **Tabs 4, 5 and 6 of PS-1 [TBP.011.001.0110, TBP.006.001.0121, TBP.004.011.0610]** and **Tabs 2 – 39 of PS-2 [TBP.001.018.5686, TBP.001.027.2115, TBP.001.022.0002, TBP.015.001.1838, TBP.015.001.1839, TBP.015.001.1840, TBP.015.001.1841, TBP.015.001.1842, TBP.015.001.1843, TBP.015.001.4244, TBP.015.001.4245, TBP.015.001.4246, TBP.015.001.4247, TBP.015.001.4248, TBP.015.001.4249, TBP.015.001.4250, TBP.015.001.4251, TBP.015.001.4252, TBP.015.001.4253, TBP.015.001.4254, TBP.015.001.4255, TBP.015.001.4256, TBP.015.001.4257, TBP.015.001.4258, TBP.015.001.4259, TBP.015.001.4260, TBP.015.001.4261, TBP.015.001.4262, TBP.015.001.4263, TBP.015.001.4264, TBP.015.001.4265, TBP.015.001.4266, TBP.015.001.5185, TBP.015.001.3788, TBP.015.001.3789, TBP.015.001.3790, TBP.015.001.1826 and TBP.015.001.3737]**, as directed in the Letter of Instructions at **Tab 7 of PS-1** . A list of the other sources I have relied upon in this report is contained at **Annex 2** of this report.
7. Finally, in preparing this report, I have been assisted by Chris Whelan, Senior Associate at RBB Economics, and Jonathan Adams, Aniek Linssen, Mohsin Raza, and Alex Suchanek, Associates at RBB Economics. They have assisted me in preparing the data analyses contained in this report.



Signed _____

Patrick Smith

Dated 9 March 2017

II. Executive summary of opinions

8. This report assesses the likely impact of the proposed merger on:
 - 8.1. competition in racing wagering services offered to punters in Australia;
 - 8.2. funding for thoroughbred horseracing, harness horseracing and greyhound racing (collectively, "racing"); and
 - 8.3. total economic welfare for the racing industry (including racing providers, racing wagering service providers and punters) in Australia.

II.A. Competition in racing wagering services

9. The net effect of the proposed merger on competition in racing wagering services depends on the balance between two effects:
 - 9.1. first, the effect arising from any loss of direct competition between the parties' operations, in particular the parties' online and phone wagering operations, and
 - 9.2. second, the effect on competition amongst the merged entity and other wagering operators, in particular corporate bookmakers, but also other on-course wagering operators and operators of other betting and gambling services.
10. The parties only compete with each other to a limited extent.
 - 10.1. The parties' on-course and retail wagering services are offered in different states and territories (Tabcorp in New South Wales, Victoria and the ACT; Tatts in Queensland, South Australia, Tasmania and the Northern Territory) and so the parties are unlikely to compete significantly with one another in these channels. The primary scope for competition between the parties is in phone and online

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channels, where each of the parties' wagering services are offered to punters across Australia.

10.2. However, even in the phone and online channels, the **[HIGHLY confidential to Tabcorp and Tatts]** [REDACTED] punters who choose to bet with either of the parties, choose to place their bets with the party that is the local retail licensee in their state of domicile. Over **[HIGHLY confidential to Tabcorp and Tatts]** [REDACTED] of online and phone tote racing bets placed by punters domiciled in New South Wales, Victoria and the ACT are placed into Tabcorp tote pools; while just under **[HIGHLY confidential to Tabcorp and Tatts]** [REDACTED] of online and phone tote racing bets placed by punters domiciled in South Australia, Queensland, the Northern Territory, and Tasmania are placed into Tatts pools.

10.3. A **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of Tabcorp and Tatts' punters choose to place online and phone tote bets in the tote pools of the party that is not their local retail licensee. This proportion of wagering activity does not appear to respond to the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] pool sizes between the Tabcorp and Tatts pools. I am not aware of obvious options available to Tatts that could significantly affect the relative pool sizes of the Tatts pool and the Tabcorp pools. The **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of punters that choose to place online and phone tote bets in the tote pools of the party that is not their local retail licensee may significantly comprise large punters. Large punters are likely to be most aware of the benefits of betting into deeper pools, and betting into multiple pools for the same betting opportunity, as large bets will have the greatest negative effects on tote payout rates for the punter concerned, especially within smaller pools. In the case of large punters betting across pools in order to achieve the benefits of co-mingling, these different tote pools would not be competing with one another, but rather offering the same punter two independent

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pools in which to place his bets, to allow him to spread the effect of his bets across the different pools.

10.4. Punters that choose to place bets in the tote pools of the party that is not their local retail licensee are more likely to be better informed regarding their online options for wagering on racing. In the first instance, this [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters already display an awareness of options to place bets with out-of-state operators. In particular for large punters, that have the strongest incentives to place bets into multiple pools, and that often bet into all Australian tote pools (and some international pools), this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.

10.5. Similarly, a [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of Tabcorp and Tatts' punters choose to place online and phone fixed odds bets with the party that is not their local retail licensee. This [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters may significantly comprise larger and more successful punters. Larger and more successful punters have the greatest incentives to place fixed odds bets with multiple fixed odds operations over time. There are indications that the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters who choose to place fixed odds bets with the party that is not their local retail licensee [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates, and accordingly are likely to be more successful punters, who would have the strongest incentives to be aware of, and utilise alternative fixed odds operations over time. In particular for larger and more successful punters, this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.

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- 10.6. The parties' offerings are significantly differentiated. The tote pools operated by the parties are of different sizes, with Tatts offering far smaller pools than those offered by Tabcorp, even only considering local contributions – international co-mingling arrangements make the Tabcorp pools even larger. The parties' average fixed odds payout rates are different, and do not appear to respond to one another.
- 10.7. There is limited scope for competition between the parties' racing wagering services, and the parties are relatively distant competitors with one another, even in the online and phone channels.
11. The merged entity will continue to compete with numerous other large and well-resourced wagering service providers.
- 11.1. Corporate bookmakers offer punters fixed odds and tote derivative fixed odds wagering services in the online and phone channels. A number of odds comparison services exist that directly compare odds available across various fixed odds and tote services, for any given racing event. The parties compete with corporate bookmakers, who collectively account for significantly larger turnover than the parties, and have grown faster than the parties over the past few years. Corporate bookmakers operate solely online and via phone, and accordingly have limited incremental costs of expansion. Corporate bookmakers include rivals owned by multinational bookmakers with access to substantial funding for promotion and expansion, such as Paddy Power (which acquired Betfair Group plc in 2016), Bet365, William Hill, Unibet, and Ladbrokes.
- 11.2. In contrast to the parties, which only overlap to a limited extent, and each only achieve **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] online and phone racing wagering turnovers in states in which the relevant party is not the local retail licensee, the corporate bookmakers are likely to achieve online and phone racing wagering turnovers that are **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED]

II.B. Funding for racing

14. Racing associations stage race meetings and provide racing and training facilities, and other infrastructure for their respective races. They also provide prize money or “stakes” and other subsidies to ensure participation in the sport.
15. The parties are the most significant contributors towards funding for the racing industry, and, in turn, the parties are the most heavily dependent on high quality racing, on which to offer wagering opportunities to punters.
16. Assessing the likely impact of the proposed merger on funding for the racing industry requires considering the result of two main dynamics.
 - 16.1. The effect of the merger on wagering turnover and revenues generated by the parties, for a given relationship between wagering revenues and funding for racing. In many states, funding for racing is linked to wagering revenues, such that higher tote wagering revenues lead directly to higher funding for the racing industry.²
 - 16.2. The effect of the merger on the bargaining dynamic that gives rise to the relationship between wagering revenues and the contributions to the racing industry.
17. The relationships between wagering revenues and funding for racing are the result of negotiations involving multiple parties, over a long period of time, and are expected to continue for the foreseeable future. Moreover, I have not seen any evidence that the history of consolidation amongst the state licensed wagering operators has led to any shift against the funding of the racing industry. Accordingly, the effect of the merger on wagering turnover and revenues generated by the parties is likely to dominate. It is likely that the merger will result in an increase in wagering turnover and revenues of the merged entity, relative to the counterfactual. Even if a significant part of this increase in

² [Confidential to Tabcorp] [REDACTED]. See Assumptions, paragraph 90(c) (Tab 1 of PS-2 [TBP.001.027.1974]).

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the parties' wagering turnover and revenues is at the expense of those of the corporate bookmakers, this would result in an increase in funding for the racing industry, as the parties have obligations to make proportionally higher contributions to the funding of racing than the corporate bookmakers.

18. The merger is unlikely to harm funding for racing, but rather is likely to enhance it, with an incremental contribution by the parties of at least [Confidential to Tabcorp] [REDACTED] [REDACTED].³

II.C. Total economic welfare for the racing industry

19. The impact of the proposed merger on total economic welfare for the racing industry (including racing providers, racing wagering service providers and punters) depends on the two effects described previously – the effect on competition, and the effect on funding for the racing industry, as well as the potential for further efficiencies that are not relevant to the competition or funding analyses.
20. The merger is unlikely to lead to any significant harm to competition, but rather is likely to give rise to a number of efficiencies and product quality enhancements that would make the merged entity a more effective competitor against the corporate bookmakers. The ultimate impact on total economic welfare is likely to be positive, given that the anticipated efficiencies are expected to be net positive in terms of industry turnover (output), and profitability.
21. The merger is unlikely to harm funding for racing, but rather is likely to enhance it. The merger is likely to result in a significant increase of the turnover and revenue of the merged entity relative to the counterfactual, which would lead to additional funding for racing. Additional funding is likely to be applied to investments in the racing industry and stakes and other prize money that are used to attract owners, trainers and jockeys. The

³ See Assumptions, paragraph 186 (Tab 1 of PS-2 [TBP.001.027.1974]).

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ultimate impact on economic welfare will depend on the multipliers that would apply to this additional funding, within the racing and associated industries.

22. The proposed merger is likely to give rise to a number of efficiencies that are likely to increase the turnover and revenues generated by the merged entity, relative to the parties under the relevant counterfactual. Some of these efficiencies are likely to result in benefits to consumers through enhancing the effectiveness of the merged entity in competing with the corporate bookmakers. However, some of these synergies are less likely to be directly passed on to benefit consumers, and will more likely be a direct benefit for the merged entity. To the extent that any of these savings are not passed on, they would accrue to the merged entity (and its shareholders) as additional profits.

23. The additional wagering revenues (and resulting profitability) will also result in higher fees and taxes paid by the parties to a wider set of stakeholders, outside of racing. In particular, other sporting bodies will receive an additional **[Confidential to Tabcorp]** [REDACTED], retail wagering venues, such as pubs, clubs and agencies, will receive an additional **[Confidential to Tabcorp]** [REDACTED], and state and federal governments will receive an additional **[Confidential to Tabcorp]** [REDACTED].⁴

⁴ See Assumptions, paragraph 182 (Tab 1 of PS-2 [TBP.001.027.1974]).

II.D. Outline

24. The remainder of this report is structured as follows:

24.1. section III assesses the likely effects of the proposed merger on competition in racing wagering services offered to punters in Australia;

24.2. section IV assesses the likely effects of the proposed merger on funding for racing;
and

24.3. section V assesses the likely effects of the proposed merger on total economic welfare for the racing industry in Australia.

III. Competition in racing wagering services

III.A. Introduction

25. This section assesses the likely effects of the proposed merger on competition in wagering services offered to punters in Australia:

25.1. section III.B describes the framework for the assessment;

25.2. section III.C describes the parties' activities;

25.3. section III.D assesses the nature of competition;

25.4. section III.E assesses the scope for competition;

25.5. section III.F assesses competition between the parties;

25.6. section III.G assesses competition between the parties and corporate bookmakers;

25.7. section III.H assesses efficiencies; and

25.8. section III.I concludes.

III.B. Framework for the assessment

26. The net effect of the proposed merger on competition in racing wagering services depends on the balance between two effects.

26.1. First, the loss of direct competition between the parties' operations, in particular the parties' online and phone operations.

26.2. Second, the effect on competition amongst the merged entity and other wagering operators. The proposed merger may make the merged entity a more effective competitor through allowing it to invest in improving the quality of its retail and

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online wagering offerings, introducing a wider variety of new bet types, and co-mingling to offer punters the opportunity to bet in deeper and more stable tote pools. Additionally, a merger might result in lower costs that might be passed on to consumers in the form of higher quality or lower prices.

27. The two key parts of the assessment framework are assessing the nature and scope of competitive interactions, and then assessing the likely effects of the proposed merger on competition, in the light of those initial observations. I discuss each part of the analysis in turn below.

III.B.i. The nature and scope of competitive interaction

28. When considering the likely effect of a merger on competition, it is typically necessary to first consider the scope for competitive interaction between each of the merging parties' products or services and those of rivals. Market definition can be a useful first step in identifying the most significant sources of competitive constraints. The purpose of market definition is to inform the competitive assessment, and market definition should be undertaken with the ultimate competitive assessment in mind.⁵
29. The standard approach to market definition is to consider substitutability amongst a candidate set of goods or services, typically in response to changes in their relative prices. A common thought experiment is the small but significant non-transitory increase in price ("SSNIP") test. This test starts with a candidate set of goods or services (considered in each of a product dimension, and a geographic dimension) and assesses

⁵ See Vickers, John, then Director General of Fair Trading, "Competition economics and policy: A speech on the occasion of the launch of the new social sciences building at Oxford University" located at http://webarchive.nationalarchives.gov.uk/20100113210150/http://oft.gov.uk/shared_oft/speeches/spe0702.pdf which states the following: "The core purpose of market definition, then, is to help assess questions about market power, or in the case of mergers, changes in market power" (page 10); and "Pitfalls of market definition occur if its purpose is forgotten. Then substantive conclusions can turn hazardously on definitions... How people define the market has no effect on the competitive reality, just as whether or not they wear glasses has no effect on the weather" (page 12).

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whether a hypothetical monopolist who sold these products would be able to profitably raise prices by a small but significant amount (for example, 5%).⁶

30. If the competitive constraints arising from demand-side or supply-side substitutes lying outside of the candidate market are strong enough, the hypothetical monopoly would lose sales to these substitutes in sufficient numbers to render its price increase unprofitable.⁷ This would then indicate that the market should be widened to include products or geographic areas previously outside of the candidate market and to which the switching was occurring.
31. It is not necessary that all, or even a majority of customers, would switch in response to a price increase. Rather, the focus of the SSNIP test is on the marginal customers that are the most likely to switch in the event of a price rise. It is sufficient that enough demand switches so that the profit lost due to the reduced volume of sales outweighs the extra margin gained on retained sales due to the price increase.⁸ Even if the majority of customers would not switch in response to a SSNIP, the market may nonetheless be broad if the value of sales represented by marginal customers (i.e. those that would switch) is sufficiently significant.
32. The relevant market can contain products that are significantly differentiated.⁹ For example, different brands of running shoes may be viewed as non-identical in the eyes of consumers, and yet the relevant market may be one for all running shoes because a hypothetical monopolist of one brand of running shoes would not be able to profitably

⁶ See ACCC "Merger guidelines" November 2008 paragraphs 4.6 and 4.19-4.22.

⁷ Demand side substitution refers to the willingness and ability of buyers to switch to alternative products from those in candidate market in response to a change in relative prices. Supply side substitution refers to the ability of suppliers of products outside of the candidate market to quickly and easily begin supplying products that compete with those in the candidate market in response to a price increase. For a rival supplier to be considered an effective supply side constraint, it should be able to supply the products in question without incurring significant additional (sunk) costs in doing so.

⁸ The only exception to this arises if suppliers are able to price discriminate against those customers that are not able to easily switch between products: in this case it may be appropriate to define the market more narrowly (to only those customers that can be identified as unable to engage in demand side substitution).

⁹ See ACCC, 'Merger guidelines', November 2008, paragraphs 4.33-4.34.

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raise prices by 5% because of the extent of consumer switching this would induce to rival brands.

33. Even if some products are not included in the relevant market, they might still impose a competitive constraint, for example, because the supplier of that product may be able to enter the relevant market in a timely manner or because customers see that product as a sufficiently good substitute.¹⁰
34. While the SSNIP test refers to price, firms may actually compete on a broader set of product attributes (such as quality, range and service).¹¹ The test could equally be applied in terms of a deterioration in another competitive parameter, such as quality, range or service, in particular if price is not an important factor in consumers' choice.
35. While the intuition behind the SSNIP test is clear, in many cases there simply are not sufficient data available to definitively conclude on a precise market definition, calibrated according to some variant of a hypothetical monopolist, or SSNIP, test. However, it may not be necessary to come to a definitive conclusion on market definition in order to allow a proper assessment of the likely impact of a merger on competition – it may be sufficient to analyse the likely competitive effect of a merger following an assessment of the nature and scope for competition that is relevant to each party's products or services.

III.B.ii. The competitive assessment

36. The competitive assessment takes into account the following features that are likely to determine whether the merger will lead to a substantial lessening of competition or not:

¹⁰ See ACCC, 'Merger guidelines', November 2008, paragraph 5.16, which specifies that if entry occurs within one to two years, a merger is less likely to lead to an increase in unilateral market power for the merging parties.

¹¹ See ACCC, 'Merger guidelines', November 2008, para. 3.1. Similarly, competition authorities in other jurisdictions recognise that competition may take place over non-price elements of competition. For example, the UK's OFT states that "where products are differentiated, undertakings compete not only on price but also on features such as quality, service, convenience and innovation" (OFT, Assessment of market power, 2004, para. 5.34).

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- 36.1. whether the parties compete with one another, i.e. whether they provide substitute products;
 - 36.2. if they do provide substitute products, whether they are “close competitors” or not;¹²
 - 36.3. which other firms the parties compete with; and
 - 36.4. whether any attempt to raise prices (or worsen quality, range or service) would lead to expansion or product repositioning from existing market participants or entry by new firms, such that the price increase would not be profitable.
37. Some efficiency gains are taken into account as part of the competitive assessment. In particular, if the merger leads to marginal cost efficiency savings, this will lead the merged firm to lower prices, other things being equal.¹³ This may offset any incentive to raise price as a result of any loss of competition between the parties. As a result, a merger may not lead to a substantial lessening of competition (that is associated with higher prices or worse quality), even when it leads to a loss of direct competition between the merging firms.
38. The merger may also lead to efficiency savings that do not directly affect prices, but nevertheless lead to a gain in total economic welfare (because they raise the firm’s profits). These efficiency gains are assessed as part of the assessment of the proposed merger on total economic welfare for the racing industry in Australia.

¹² See ACCC, ‘Merger guidelines’, November 2008, paragraph 5.13, which states: “*Merger parties are likely to have an incentive to increase the price of one or both products if the sales lost due to the price increase would be recaptured by an increase in sales of the other product. That is, the greater the number of customers that regard the merger parties as particularly close competitors (for example, their first and second choices), the greater the potential for the merger parties to impose a unilateral increase in price post-merger.*”

¹³ See RBB Economics “Cost pass-through: theory, measurement, and potential policy implications” in pages 29-30

III.C. The parties' activities

39. The two parties to the proposed merger offer pari-mutuel (totalisator or "tote") and fixed-odds betting services to punters in Australia.¹⁴ The parties offer wagering and tote betting in Australia, *on-course* (for example, at racing and sporting events), *off-course* (in retail outlets) in different states and territories, as well as via online and telephone betting throughout the country.¹⁵
40. Tabcorp supplies:
- 40.1. on-course and off-course wagering at bricks and mortar retail outlets known as TABs, or via TAB betting terminals at hotels pubs and clubs in New South Wales, Victoria and the ACT;
 - 40.2. online or telephone wagering nationally under the TAB brand; and
 - 40.3. online or telephone fixed odds wagering via Luxbet, a wholly owned corporate bookmaker licensed in the Northern Territory.¹⁶
41. Tatts supplies:
- 41.1. on-course and off-course wagering at "bricks and mortar" retail outlets commonly known as "the TAB" (or, more recently "UBET"), outlets in hotels, pubs and licensed clubs, and self-service terminals within those outlets, in Queensland, South Australia, Tasmania and the Northern Territory; and

¹⁴ These terms are defined in the Assumptions at paragraphs 25 to 34 and 35 to 39 respectively (**Tab 1 of PS-2 [TBP.001.027.1974]**). For reference, *pari-mutuel betting* is a form of betting where the total betting pool is split between all punters on the winning ticket after a deduction of outcome. In this form of betting, the winnings of a winning ticket are not known *a priori*, as they will depend on the total number of people betting on the final outcome. The betting provider's revenue, or the difference between total turnover received from bets placed, and winnings paid to punters, is fixed irrespective of the outcome. Fixed-odds betting is a form of betting where the punter is offered a fixed-odd for betting in a particular outcome at the time of the betting. In this type of bet, the revenue for the betting provider will depend on the outcome and the amount of bets put on each of the possible outcomes.

¹⁵ See Assumptions, paragraphs 101-116 (**Tab 1 of PS-2 [TBP.001.027.1974]**), for a description of the parties' wagering activities.

¹⁶ See Assumptions, paragraph 3 (**Tab 1 of PS-2 [TBP.001.027.1974]**). Tabcorp's racing wagering services are supplied through its Wagering and Media division. In addition to the racing services mentioned, this division also broadcasts racing vision nationally on three Sky sports television channels, and operates Sky Sports radio in New South Wales and the ACT. Tabcorp also has a Keno division, which supplies Keno, a frequently run game of chance, and a Gaming Services division, which supplies various services related to electronic gaming machines (EGMs), often known as "poker machines".

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- 41.2. online or telephone wagering nationally under the UBET brand.¹⁷
42. In Western Australia, totalisator betting is offered solely by the publicly owned Racing and Wagering Western Australia (“RWWA”).¹⁸
43. Other licensed bookmakers may offer fixed odds betting services on-course.¹⁹
44. Corporate bookmakers offer fixed odds bets through phone and online channels on many of the same underlying betting opportunities (for example, horse races) as those covered by the parties’ tote (and fixed odds) products.
45. If placing a tote or fixed odds bet on-course or at a physical off-course retail outlet, the punter must use an operator that has a license to provide wagering services through those channels in the relevant state or territory. The parties’ on-course and retail wagering services are offered in different states and territories (Tabcorp in New South Wales, Victoria and the ACT; Tatts in Queensland, South Australia, Tasmania and the Northern Territory) and so the parties are unlikely to compete with one another significantly in these channels.²⁰
46. However, if placing any bet (tote or fixed odds) by phone or online, a punter can access any tote pool operated by Tabcorp or Tatts, and can access fixed odds wagering supplied by Tabcorp, Tatts or any corporate bookmaker.²¹ The punter is also able to place fixed odds bets on racing courses or other sports events from authorized bookmakers.

¹⁷ See Assumptions, paragraph 13 (**Tab 1 of PS-2 [TBP.001.027.1974]**). Tatts’ racing wagering services are supplied through its Wagering division. In addition to the racing services mentioned, this division also broadcasts sports and racing information on RadioTab in Queensland, South Australia, Tasmania and the Northern Territory. Tatts also has a Lotteries Division, which is Tatts’ main business, and includes selling lottery products in all states and territories of Australia, except Western Australia. Finally, Tatts has a Gaming Solutions division that supplies services related to EGMs. See Assumptions, paragraphs 13(d), 14, and 15 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

¹⁸ See Assumptions, paragraph 54 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

¹⁹ See Assumptions, paragraphs 51(c), 52(b), 53(c), 55(b), 56(b), 57(b) and 58(c) (**Tab 1 of PS-2 [TBP.001.027.1974]**).

²⁰ Limited exceptions to this could occur close to state borders (such as between New South Wales and Victoria), where Tabcorp and Tatts may operate “bricks and mortar” stores that are geographically close to one another.

²¹ See Assumptions, paragraphs 111(c), 116(c), 119, 120, 126(c), and paragraphs 50-59 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

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47. Accordingly, the primary scope for competition between the parties is in phone and online channels, where each of the parties' wagering products are offered to punters across Australia.

III.D. The nature of competition

III.D.i. Introduction

48. In this section I set out some preliminary observations on the nature of competition, and my expectations of the likely drivers of competition between different wagering product types.
49. In summary, I expect that punters should be concerned about the potential for large payouts on wagering products (whether fixed odds or tote products). While punters may enjoy or derive entertainment value from the activity of wagering, punters should have regard to their ability to maximise their returns from wagering. The size of payouts to a given punter might be determined by the odds offered on relevant betting opportunities (which might be summarised by the average payout rates over time), and by the willingness of different wagering service providers to stand a given bet placed by a punter. I also consider that differences in the risks borne by different wagering service providers may influence the willingness of those wagering service providers to stand bets placed by particular punters.
50. I expect that the proportion of turnover that is returned to winning punters (payout rates) is likely to be a factor in punter choice, although it may be difficult to discern the effect of payout rates on punter behaviour, in particular over the short term.²² Punters may consider other characteristics of different bet types when deciding whether to place tote or fixed odds bets; while on average the payout rates may be better for one bet type than another (e.g. fixed odds better than tote), the payout rates on individual outcomes might

²² Payout rates refer to the amount paid out to punters relative to the amount of money they place in wagers.

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sometimes be better for tote bets on some outcomes, and sometimes worse for tote bets on other outcomes; punters may still choose to bet into different types of wagering products over time. Moreover, I expect tote pool sizes to be an important factor in punter choice.

51. I also observe a number of significant trends in the industry, by which punter demand is increasing for some bet types or distribution channels, and decreasing for others. In particular, I consider trends in punter demand in regard to:

- 51.1. retail and online wagering;

- 51.2. fixed odds and tote wagering; and

- 51.3. racing and sports betting.

52. These trends might or might not be driven by competitive interactions, although these trends are likely to make it more difficult to isolate competitive interactions between different wagering products. It is more difficult to analyse potential interactions between two or more variables when each variable might exhibit strong trends potentially caused by other factors.

III.D.ii. Odds and payout rates

53. The parties offer tote and fixed odds bet types in the same channels (for example, online), and, at least in respect of the most popular “win” and “place” bet types, current odds are quoted alongside one another for each of fixed odds and tote bet types for the same betting opportunities, for example the odds in respect of a given horse to win or place in a given race. Figure 1 shows the TAB online offering, for an example race, the Karaka 2017 Maiden, and shows that Tabcorp displays odds for its fixed odds and tote offerings alongside one another. For example, \$3.60 for Bint El Bedu to win on fixed odds versus \$3.80 for Bint El Bedu to win on the tote. In this context I would expect

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punters to consider and compare the fixed odds and the current indicative tote odds for the same betting opportunity.

Figure 1: Fixed and tote racing odds offered on the TAB website

The screenshot shows the TAB website interface for a race. At the top, there are navigation options for Racing (Cranbourne), Weather (Ocast), and Track (Soft (6)). Below this, there are sections for different race types: R1 (19:00), R2 (19:30), R3 (20:00), R4 (20:30), R5 (21:00), R6 (21:30), and R7 (22:00). The main race is R1, Countdown to Karaka 2017 Maiden, starting at 19:00. It is a 5h race on a 1400m track, worth \$25,000, with EQ1 conditions. The race is open to Apprentices and has 2 Place Divisions. There are 6 Placings and FO Pays 6 Placings. Replays are not available. The page also shows a 'TIPS' section with 'Tips By Adam Olszanski' and 'Best Overall' tips.

Below the race details, there are betting options: Win & Place, Quinella, Exacta, Trifecta, and First 4. There are also buttons for 'Show All Form', 'Compare', 'Sky Rating', and 'Fixed Odds Flucs'.

No	Runner (Barrier)	Form	Weight	Sky Rating	FIXED ODDS		TOTE	
					Win	Place	Win	Place
1	BINT EL BEDU (5) J C Newitt T M Price	-	57	-	3.60	1.75	3.80	2.30
2	CURATA PRINCESS (2) J S Wynne T D Wynne	f507x	57	79	SCR	SCR	SCR	SCR
3	ELOQUENT BELLE (4) J A Lynch T R Laing	f70x7	57	81	14.00	4.60	10.80	3.40
4	JOURNEYGIRL (3) J R Maloney T M Beer & M Hinton	f94	57	84	4.60	2.05	9.70	3.00
5	MILLIE THE MISSILE (4) J D Stackhouse T L Oliver	f2	57	95	SCR	SCR	SCR	SCR
6	MRS GARDENIA (1) J M Dee T D Weir	f5	57	93	3.90	1.85	3.40	2.70
7	PRETTY MAMA (2) J M Walker T N Blackiston	f3	57	100	2.90	1.55	2.30	1.04

Field (All Runners)

Mystery

Last Updated: 13:29:54

Source: www.tab.com.au, accessed on 20 January 2017.

54. Corporate bookmakers offer fixed odds wagering products, and also offer tote derivative fixed odds wagering products. These are fixed odds products that are not only based on the same underlying betting opportunities as those of the tote, but also pay odds that are directly derived from the dividend declared by a tote. Examples of tote derivative fixed odds betting products include “best of odds” (also called “Top Tote”), in which the bookmaker pays the best of the odds offered by different totalisator pools, and “home tote

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odds”, in which the bookmaker pays the totalisator odds offered on the punter’s “home tote” (the tote in their state or territory) plus 5%.²³

55. Corporate bookmakers also quote current odds alongside one another for each of fixed odds, and tote derivative fixed odds wagering products, such as “Top Tote”, “home tote odds”, or average of tote odds, for the same betting opportunities. Figure 2 shows the online offerings of the largest corporate bookmaker in Australia, Sportsbet, for the same example race, the Karaka 2017 Maiden. “TT+”, or “Top Tote Plus”, is a tote derivative fixed odds wagering product that pays the best of the dividends declared by the three Australian tote pools. Sportsbet displays odds for its fixed odds and tote derivative products alongside one another. For example, \$3.70 for Bint El Bedu to win on fixed odds versus \$4.00 for Bint El Bedu to win on the TT+ tote derivative product. In this context I would also expect punters to consider and compare the odds for fixed odds and for tote derivative products, for the same betting opportunity.

²³ See Assumptions, paragraphs 40-45 (Tab 1 of PS-2 [TBP.001.027.1974]).

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Figure 2: Fixed and tote derivative odds racing products offered on the Sportsbet website

Basic Detailed		Form	Fluctuations		Fixed Prices		TT+	MD	
			Open	Fluc1	Fluc2	Win	Place	Win	Place*
	1. Bint El Bedu (7) T: M G Price J: C Newitt W: 57 kg		5.00	3.90	3.80	3.70	1.85	4.00	MD
	2. Curata Princess (2) T: Ms D Wynne J: Sally Wynne W: 57 kg	507x							Scratched
	3. Eloquent Belle (6) T: R E Laing J: A Lynch W: 57 kg	70x7	34.00	16.00	17.00	16.00	5.50	15.50	MD
	4. Journeygirl (5) T: M Beer & M Hinton J: R Maloney W: 57 kg	94	14.00	5.50	5.00	4.80	2.25	6.60	MD
	5. Millie The Missile (4) T: Luke Oliver J: D Stackhouse W: 57 kg	2							Scratched
	6. Mrs Gardenia (1) T: D K Weir J: M Dee W: 57 kg	5	3.50	3.60	3.70	3.80	1.90	5.00	MD
	7. Pretty Mama (3) T: N A Blackiston J: M Walker W: 57 kg	3	2.70	2.70	2.80	2.70	1.40	2.30	MD

Source: www.sportsbet.com.au, accessed on 20 January 2017. Notes: "TT+" stands for "Top Tote Plus" and is described on the Sportsbet website as "[t]he better of the dividends declared by the three Australian TAB's or the Starting Price (SP). The Starting Price is not available on Top Tote place bets." "CB" stands for "Country Best" and is described on the Sportsbet website as "[t]he best dividend of the VIC and NSW TABs for Place and the place portion of Each-Way wagers at non metro racetracks".

56. A number of odds comparison services exist that directly compare odds available across various fixed odds and tote services, and some of these odds comparison websites, such as Punters.com.au, are popular websites, based on Google Trends data.²⁴ Figure 3

²⁴ See for example the https://www.punters.com.au/odds-comparison/horse-racing/australia/cranbourne_92309/countdown-to-karaka-2017-maiden-plate_532972/ screenshot at Figure 3. See also the https://www.bestodds.com.au/odds/horse-racing/united-kingdom/Kempton_91184/Smarter-Bets-With-Matchbook-Betting-Exchange-Handicap_527602/ screenshot at Tab 8 of PS-1. Considering data from Google Trends (see <https://www.google.com.au/trends/explore?q=Punters.com.au> screenshot at Tab 9 of PS-1,

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shows a screenshot from an odds comparison website, Punters.com.au, for the same example race, the Karaka 2017 Maiden. This screenshot was taken after the race, and so each of the fixed odds and tote odds had likely changed since the time of the previous two screenshots. Three different tote odds, and fixed odds from 14 different fixed odds and betting exchange offerings are shown alongside one another. Win odds are selected in this screenshot, which shows the best win odds for each horse in bold. For example, 5, offered by Bet365, is the best odds on horse Bint El Bedu to win, whereas the three tote odds were each 4.7 on this same outcome. The Punters website also includes promotional offers to join various corporate bookmaker and tote operator wagering platforms. In this context I would expect punters to consider and compare the odds offered across these different wagering service providers, for the same betting opportunity.

searches for "punters.com.au" have increased rapidly, have caught up and overtaken searches for "sportsbet.com.au", while searches for "tab.com.au" and "Ubet.com" lag well behind (see <https://www.google.com.au/trends/explore?date=2015-01-01%202017-02-01&q=punters.com.au,sportsbet.com.au,tabcorp.com.au,ubet.com> screenshot at **Tab 10 of PS-1**).

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Figure 3: Odds comparisons shown on punters.com.au

The screenshot displays the 'punters' website interface. At the top, there is a navigation bar with links for News, Live Blog, Forum, Tipping, Odds Comparison, Betting, Results, Form Guide, Stats, and Black Book. A search bar and 'Log in'/'Sign Up' buttons are also present.

The main content area is titled 'Cranbourne Race 1 Odds' and includes a William Hill promotional banner for 'UP TO \$505*'. Below the banner, there is a table of odds for various betting providers. The table columns represent different providers: Sportsbet, Ladbrokes, William Hill, Luxbet, U-BET, Palmerbet, Bookmaker, Crownbet, Bet365, Betstar, Betfair, and Betfair. The rows list the race details and the odds for each horse.

Bonus bet amount	Sportsbet	Ladbrokes	William Hill	Luxbet	U-BET	PALMERBET	bookmaker	Crownbet	bet365	BETSTAR	BETFAIR	BETFAIR					
1 Bint El Bedu (7) Craig Newitt 57.0kg	4.7	4.7	4.7	4.6	4.6	4.6	4.6	4.4	4.4	4.6	4.8	5	4.6	4.6	140	36	
3 Eloquent Belle (6) Arnon Lynch 57.0kg	25.4	23.9	21.7	31	26	22	26	31	23	26	26	23	21	26	26	90	65
4 Journeygirl (5) Ryan Maloney 57.0kg	5.9	6.8	8.4	8.5	8	8	8	7	8	8	8	8.5	12	8	8	3.1	1.01
6 Mrs Gardenia (1) Michael Dee 57.0kg	2.6	2.8	2.6	2.8	2.7	2.7	2.7	2.8	2.8	2.7	2.7	2.7	2.6	2.7	2.7	46	2.96
7 Pretty Mama (3) Michael Walker 57.0kg	2.6	2.3	2.3	2.6	2.6	2.6	2.5	2.6	2.6	2.6	2.6	2.4	2.6	2.5	2.5	46	2.82
Market percentage	119	119	120	111	114	114	115	114	114	114	114	112	113	114	115	109	98

Below the table, there is a 'Quick Bet without leaving' banner with a 'Bet Amount' of \$20 and a 'Bet Now!' button. At the bottom, there are several 'JOIN OFFER' buttons for different providers: Sportsbet (\$501), Palmerbet (\$500), Ladbrokes (\$500), William Hill (\$505), Luxbet (\$700), U-BET (\$200), and Crownbet (\$500).

Source: https://www.punters.com.au/odds-comparison/horse-racing/australia/cranbourne_92309/countdown-to-karaka-2017-maiden-plate_532972/, accessed on 1 February 2017.

57. Accordingly, I would expect that the odds offered by different wagering service providers would play a role in competition.
58. If one service offered consistently higher odds on all betting outcomes than another service, then this would very likely translate into higher average payout rates over time. However, tote and fixed odds wagering products might show differences in odds offered that vary across different types of events, and different outcomes. Tote operators typically apply the same take-out rate for bets on each outcome (for example, each horse

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wining a given race), whereas bookmakers provide fixed odds that are tailored to each outcome that punters can bet on, and depend on the bookmaker's knowledge of each outcome and appetite for risk. Accordingly, the tote might offer better odds than a fixed odds bookmaker on one horse winning a given race, and worse odds than the same fixed odds bookmaker on another horse winning the same race. By way of example, in the screenshot shown in Figure 1, above, the indicative tote odds for winning were better than the corresponding fixed odds on horses 1 and 4, but worse on horses 3, 6 and 7.

59. While I would expect odds to be a factor in punter choice, it may be difficult to discern the effect of average payout rates on punter behaviour, in particular over the short term. While on average the payout rates may be better for one bet type than another (e.g. fixed odds better than tote), the payout rates on individual outcomes might be sometimes better for tote bets on some outcomes, and sometimes worse for tote bets on other outcomes. Punters may still choose to bet into different types of wagering products over time depending on the odds offered for the events they are interested in betting on.

III.D.iii. Characteristics of different bet types

60. A tote's revenue is not contingent on the racing result, and the tote operator has no financial interest in the outcome of the event on which bets are placed.²⁵ Instead, totalisator wagering involves punters betting against each other, rather than against the totalisator operator.²⁶ At the time that a bet is placed, punters do not know what the tote payout will be, on a given outcome – this is only determined later, after all bets have been placed.²⁷
61. Fixed odds betting, by contrast, involves a punter betting against the bookmaker on the outcome of an event, and the punter knows the odds that will be paid at the time of

²⁵ See Assumptions, paragraph 32 (Tab 1 of PS-2 [TBP.001.027.1974]).

²⁶ See Assumptions, paragraph 33 (Tab 1 of PS-2 [TBP.001.027.1974]).

²⁷ See Assumptions, paragraphs 26-28 (Tab 1 of PS-2 [TBP.001.027.1974]).

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placing a bet.²⁸ The bookmaker takes on risk in accepting a fixed odds bet where odds are known and fixed at the time of placing the bet.²⁹ Bookmakers invest in customer risk management capabilities, and in particular may attempt to manage certain higher risk bet and customer types, monitoring customers' transactions and betting behaviours, which may result in bookmakers refusing to accept some types of bets, from some customers.³⁰

62. These risk management functions may additionally affect punter demand for different bet types, in particular for larger or more successful punters.

III.D.iv. Tote pool sizes

63. I would expect tote punters to value larger, more liquid tote pools. Larger pools increase punter confidence that the indicative dividends published at the time of placing a bet will be received.³¹ Larger pools also mean that there is potentially more money available to distribute to winning customers, and deeper pools often allow the offer of more wagering products (such as wagering on international races, or more unusual, exotic bet types). Larger pools also make it less likely that the punter's own bet will significantly reduce the dividend payable.
64. In tote betting, the indicative dividends for each pool usually vary significantly from time to time from the opening of the pool for a particular race right up to the start of the race, and the final dividends often differ from the indicative dividends published before a punter places a bet. This is because subsequent bets invested into the pool will affect the final dividends to be paid.³²
65. The influence that subsequent bets invested into the pool have on the final dividends is a function of the percentage of the total pool on each selection (e.g. a contestant in the

²⁸ See Assumptions, paragraph 35 (Tab 1 of PS-2 [TBP.001.027.1974]).

²⁹ See Assumptions, paragraphs 22 and 36-38 (Tab 1 of PS-2 [TBP.001.027.1974]).

³⁰ See Assumptions, paragraph 109 (Tab 1 of PS-2 [TBP.001.027.1974]).

³¹ See Assumptions, paragraphs 28-30, and 105 (Tab 1 of PS-2 [TBP.001.027.1974]).

³² See Assumptions, paragraph 27 (Tab 1 of PS-2 [TBP.001.027.1974]).

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race) and the size of the pool. The larger the pool, the smaller the effect of subsequent bets on the dividends or payout odds for earlier bets.³³

66. By contrast, in smaller illiquid pools, large bets can significantly affect the pool, and can have a material impact on the final dividend, making the pool less attractive to punters.³⁴
67. By way of example, in a race with two horses, A and B, in which two punters, 1 and 2 have each already placed \$100 on each horse, if horse A wins, the winning punter (1), will receive \$150 (total bets of \$200, less commission of 25%, or \$50). If a third punter (3) decided to place a further bet of \$200 on the same horse A, then this would destroy his own returns as well as the return to the first punter, even when backing the winning horse – the two winning punters would each receive only their initial investment (total bets of \$400, less commission of 25%, or \$100, to give a pool of \$300 split \$200 for punter 3, and \$100 for punter 1). Any larger bet would make this pool unprofitable, even for “winning” punters. If the pools were deeper, with, for example \$500 already placed on each horse (\$1,200 in total, including \$200 placed by punter 3), then the effect would still be noticeable, but would be significantly mitigated. Now, winning punters would at least receive \$1.29 for every \$1 placed on winning horse A.³⁵
68. This also explains why totalisator operators enter into co-mingling arrangements with other totalisator operators to create larger pools. Tote providers would only co-mingle their tote pools, if it led to increased demand. In particular, the guest tote has to pay a fee, so would not be willing to do this unless it led to higher demand. Tabcorp has engaged in a number of co-mingling arrangements, separately in respect of each of the Victoria (SuperTAB) and NSW tote operations, in order to offer punters larger, more liquid

³³ See Assumptions, paragraph 28 (Tab 1 of PS-2 [TBP.001.027.1974]).

³⁴ See Assumptions, paragraph 30 (Tab 1 of PS-2 [TBP.001.027.1974]).

³⁵ With a commission rate of 25%, the commission on a pool of \$1,200 would be \$300. The pool after the commission would be \$900 (\$1,200 minus \$300). Thus the winning punters would receive \$900 relative to their total bets of \$700 (\$500 + \$200), or \$1.29 for every \$1 spent (\$900 divided by \$700).

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pools; separately Tatts has engaged in co-mingling between the different Tatts tote pools.³⁶

69. In response to the growth of corporate bookmakers, Tabcorp has entered into an agreement with Longitude to use its system to aggregate pools (for example, a quinella pool could be “merged” with an exacta pool to provide additional liquidity), for new bet types to be developed more quickly and at lower cost, and for approximate dividends to be displayed on exotic bet types which is not otherwise possible.³⁷
70. Large punters often bet into all Australian totalisator pools on the same event, and can and do place bets with international totalisators.³⁸ This allows a single (large) punter, to achieve much of the benefits of co-mingling across these different pools.
71. Accordingly, I would expect tote pool size to be a factor in punter choice.

III.D.v. Trends – retail and online wagering

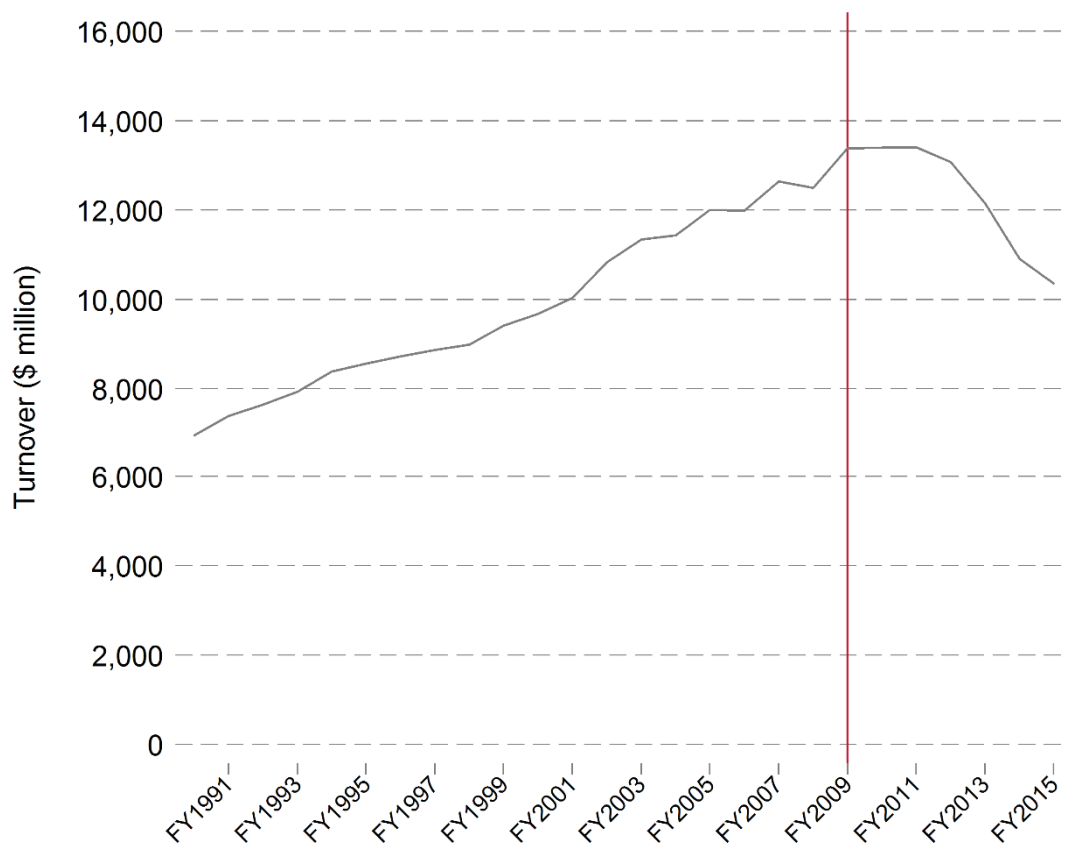
72. A punter can choose to place a bet at the race-course, at a physical retail outlet, by phone or online. Wagering turnover has fallen in the retail and phone channels, and has grown in the online channels.
73. Figure 4 shows “TAB turnover” over the period FY 1990 to 2015. “TAB turnover” largely represents offline (retail) wagering turnover, and includes countrywide turnover from on-course totalisators, off-course totalisators (racing and FootyTAB), and fixed odds racing and sports betting undertaken in retail outlets.

³⁶ See Assumptions, paragraphs 101 and 114 (Tab 1 of PS-2 [TBP.001.027.1974]).

³⁷ See Assumptions, paragraph 146(e) and (h) (Tab 1 of PS-2 [TBP.001.027.1974]).

³⁸ See Assumptions, paragraph 34 (Tab 1 of PS-2 [TBP.001.027.1974]).

Figure 4: TAB turnover, FY 1990-2015



Source: RBB Economics analysis of Australian Gambling Statistics data, "TAB Turnover" (page 20). Note: Total turnover is incomplete in FY2014 and FY2015 due to unavailable figures for South Australia. Turnover figures are nominal.

- 74. TAB (retail and on-course) turnovers had grown significantly and consistently for almost 20 years, prior to 2008, although these turnovers then stabilise and decline significantly following this date.³⁹
- 75. Figure 5 shows total wagering turnover (including racing and sports) in more detail, showing turnover for each distribution channel, but over a shorter period, from FY 2006 to FY 2015.

³⁹ Total turnover is incomplete in FY2014 and FY2015, because it excludes South Australia data. However, either excluding these two years, or considering turnover in the remaining provinces over the full period, the declining trend in turnover is still evident.

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[Confidential to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]

76. Phone turnover has fallen significantly, in particular since 2009, while turnover in the retail channel has declined more gradually since 2012. There has been very significant growth in the digital channel. Turnover through the phone distribution channel has declined from [Confidential to Tabcorp] [REDACTED] of total wagering turnover, in FY 2006 to [Confidential to Tabcorp] [REDACTED] in FY 2015. Turnover from the physical retail channel has stagnated at [Confidential to Tabcorp] [REDACTED] [REDACTED], and on-course turnover (including Premium) has declined from [Confidential to Tabcorp] [REDACTED], over the same

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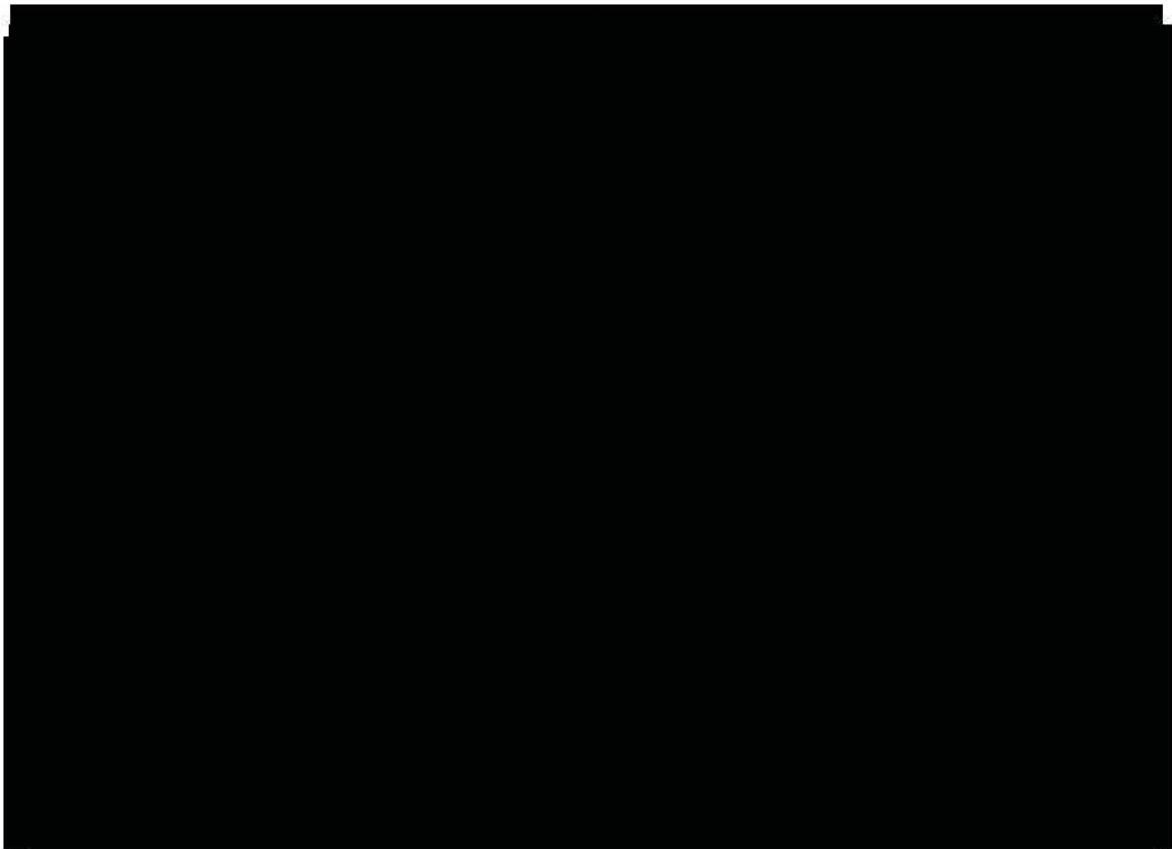
period. By contrast, the digital distribution channel has grown from **[Confidential to Tabcorp]** [REDACTED]⁴⁰.

77. This trend has also affected the parties' turnovers, although to different extents. Figure 6 shows Tabcorp's wagering turnover, split between retail (offline) and online channels, over the period FY 2007-2016.

⁴⁰ See Assumptions, paragraph 128 (Tab 1 of PS-2 [TBP.001.027.1974]).

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[HIGHLY Confidential to Tabcorp]



78. Tabcorp's wagering turnover [HIGHLY Confidential to Tabcorp] in the retail and phone channels, [HIGHLY Confidential to Tabcorp] in the online channel.

79. Figure 7 shows Tatts' wagering turnover, split between retail (offline) and online channels, over the period FY 2012-2016.

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[HIGHLY Confidential to Tatts] [REDACTED]

80. Tatts' wagering turnover has [HIGHLY Confidential to Tatts] [REDACTED] in the retail and phone channels, while [HIGHLY Confidential to Tatts] [REDACTED] in the online channel.

III.D.vi. Trends – fixed odds and tote wagering

81. Fixed odds turnover has grown, while tote turnover has grown more slowly, or fallen.
82. Figure 8 shows Tabcorp's racing wagering turnover, split between tote and fixed odds, over the period FY 2007-2016.

[HIGHLY Confidential to Tabcorp]



83. Figure 9 shows Tatts' racing wagering turnover, split between tote and fixed odds, over the period FY 2012-2016.

[HIGHLY Confidential to Tatts]



III.D.vii. Trends – racing and sports betting

- 84. Wagering turnover on each of racing and sports events has grown rapidly over the period 2012 to 2015. While wagering on sports has grown more in relative terms (*i.e.* as a percentage of total wagering), wagering on racing still accounts for the majority of turnover, and the absolute increase in racing turnover has been larger than the absolute increase in sports turnover.

- 85. Figure 10 shows the breakdown of online and phone wagering turnover between racing and sport over the period FY 2012 to FY 2015.⁴¹

⁴¹ [Confidential to Tabcorp – external counsel only]

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[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

[REDACTED]

86. Over the period FY 2012-2015, online and phone wagering turnover on racing [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III.E. Assessment of the scope for competition

87. In this section, I consider the scope for competitive interaction between different types of wagering services offered by the parties and third party rivals. In particular, I consider competitive interactions between:

87.1. different totes;

87.2. fixed odds and tote bets; and

87.3. wagering on racing and wagering on other opportunities, in particular sports.

III.E.i. Different totes

88. In this section, I consider the available evidence on competitive interaction between the different tote pools that operate in Australia. As noted above, the scope for competition between these totes is limited to remote (online and phone) channels. I consider two potential drivers of competitive interaction between different totes – average payout rates (which are affected by take-out rates), and pool sizes (which are affected by co-mingling).

89. There are three tote pools in Australia. Tabcorp operates the SuperTAB totalisator pool, which co-mingles bets from the Victorian and ACT totalisator pools with bets from the Western Australia totalisator pool operated by RWWA and various overseas totalisator pools.⁴² The New South Wales tote pool is also operated by Tabcorp; it is not co-mingled with any other pools in Australia, although it is co-mingled with international pools.⁴³ The Queensland, South Australia, Tasmania and the Northern Territory tote pools are all co-mingled and operated by Tatts under the UBET brand.⁴⁴

90. In this section, I primarily focus on evidence regarding competitive interaction between the two tote pools operated by Tabcorp, the New South Wales and the Victoria

⁴² See Assumptions, paragraph 101(b) (Tab 1 of PS-2 [TBP.001.027.1974]).

⁴³ See Assumptions, paragraph 101(c) (Tab 1 of PS-2 [TBP.001.027.1974]).

⁴⁴ See Assumptions, paragraph 114 (Tab 1 of PS-2 [TBP.001.027.1974]).

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(SuperTAB) tote pools. These are the largest two pools in Australia, and I have access to detailed data on daily turnovers in these two pools. In Section III.F, I consider evidence of competitive interaction between the Tatts UBET pool and the Tabcorp pools.

91. I first consider the potential effect of payout rates on punter demand. I would expect punter demand for tote racing wagering to respond to changes in payout rates, for the same betting opportunities. As a general matter, I would expect demand to fall in periods during which payout rates are lower, and to rise when payout rates are higher. However, as discussed above, it may be difficult to discern the effect of average payout rates on punter behaviour, in particular over the short term.⁴⁵ Punters may still choose to bet into different types of wagering products over time, depending on the odds offered for the events they are interested in betting on. Moreover, and again as discussed above, a number of other factors might also affect punter demand, and changes in punter demand over time.⁴⁶
92. Maximum tote take out rates differ for different tote bet types, e.g. the maximum take out rate for an Exacta bet is 20% in New South Wales, whereas the maximum take out rate for a Win bet is only 14.5%. However, the maximum take out rates applied by totes operated in each of Victoria and New South Wales, are identical in many cases.⁴⁷ Average payout rates are **[HIGHLY Confidential to Tabcorp]** [REDACTED] these two totes. Figure 11 shows the average payout rates achieved by Tabcorp on each of the New South Wales and Victoria totes, across all bet types.

⁴⁵ See paragraphs 58 and 59.

⁴⁶ See paragraphs 60 to 62, and Sections III.D.v, III.D.vi, and III.D.vii.

⁴⁷ See Assumptions, paragraphs 63-66 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

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[HIGHLY Confidential to Tabcorp]



- [REDACTED]
93. The scale of this figure is highly magnified, so that the difference in average payout rates in the period after 2014, is around [HIGHLY Confidential to Tabcorp] [REDACTED]. Moreover, much of this difference appears to be explained by [HIGHLY Confidential to Tabcorp] [REDACTED] in the composition of bet types placed by punters in each of the Victoria and New South Wales totes. By way of example, punters placing tote bets in the New South Wales tote might demand a [HIGHLY Confidential to Tabcorp] [REDACTED] [REDACTED] bet types that correspond to lower take out rates (e.g. Win bets, at 14.5% maximum take out) relative to punters placing tote bets into the Victoria tote who might demand a [HIGHLY Confidential to Tabcorp] [REDACTED] bet types corresponding to higher take out rates (e.g. Exacta bets, at 20% maximum take out). Figure 12 shows the same average payout rates, corresponding to each of the

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Victoria or New South Wales totes, accounting for changes in the composition of different bet types demanded by punters placing tote bets with each tote pool.

[HIGHLY Confidential to Tabcorp]

[REDACTED]

[REDACTED]

94. Once adjusting the payout of the Victoria pool to mimic the composition of bet types demanded on the New South Wales pool, or vice versa, there is [HIGHLY Confidential to Tabcorp] [REDACTED] the average payout rates experienced on the two different pools. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]. Accordingly, given these [HIGHLY Confidential to Tabcorp] [REDACTED] [REDACTED] in the average payout rates offered across these different totes, I proceed to

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consider the potential effect on punter demand (or turnover) within each tote, in response to changes in the payout rates for individual bet types.

95. Identifying the effects of changes in payout rates on punter demand may be complicated by the various confounding factors and trends that appear to have affected tote racing wagering turnover (such as the relative growth of fixed odds wagering, and the growth of sports wagering, as discussed above). The relationship between payout rates and punter demand may also be affected by simultaneity: while I have tried to identify the effect of changes in payout rates on punter demand, there may simultaneously be effects in the opposite direction, i.e. payout rates might be set in anticipation of expected changes in punter demand. In this section I have tried to identify the effects of changes in payout rates on punter demand by considering a number of abrupt changes in payout rates for specific bet types, and considering changes in wagering turnover that coincided with those changes in payout rates, thereby assuming that isolated, and in some cases temporary, changes in payout rates are exogenous to punter demand.

96. **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Since there were only a limited number of such changes that were introduced abruptly and resulted in a significant short term change in payout rates, I have considered these changes as exogenous, and have examined whether punter demand was significantly different in the period during which the tote takeout rates were temporarily altered, compared with demand in the surrounding periods.

97. **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED] However, there was **[HIGHLY Confidential to Tabcorp]** [REDACTED]

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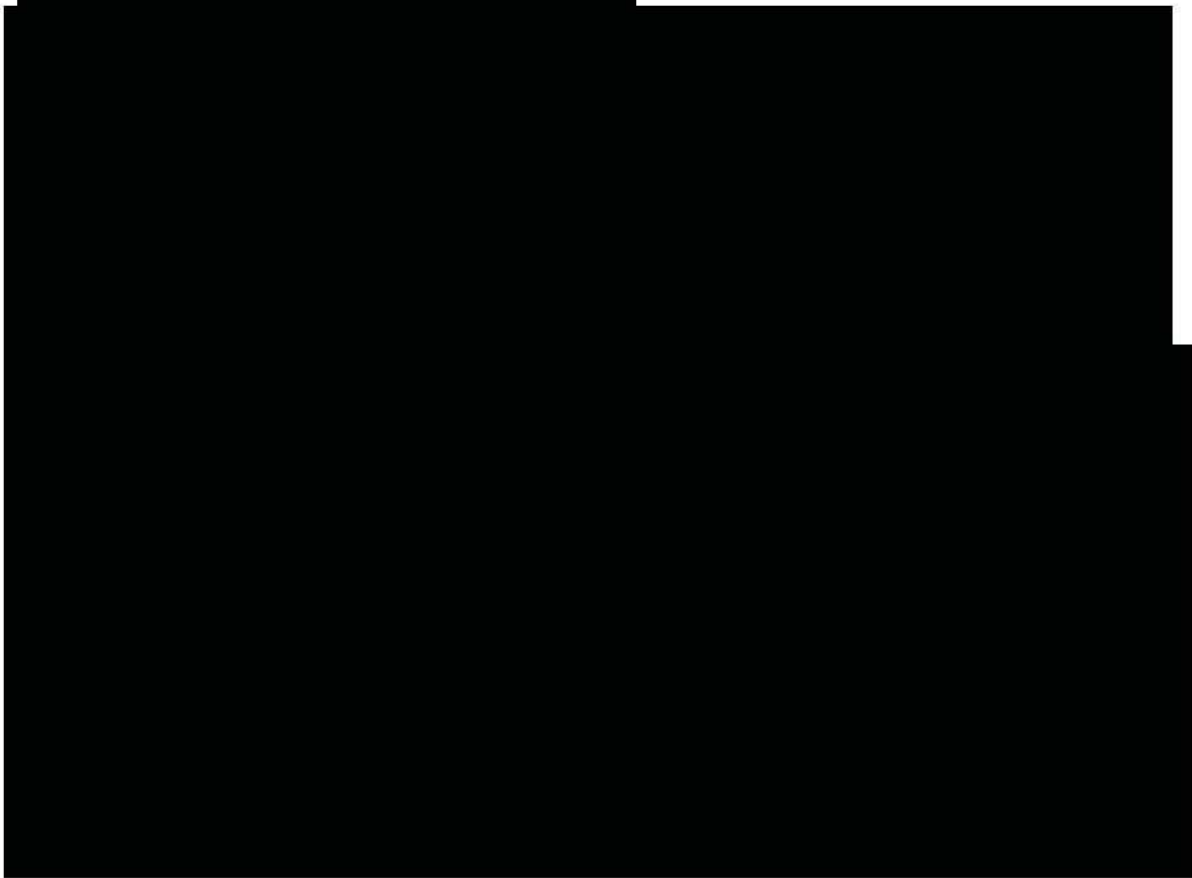
in punter demand (turnover) in either of these tote pools, in response to the **[Confidential to Tabcorp]** [REDACTED] payout rates that were available during this period.

98. **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED] However, again, there was **[HIGHLY Confidential to Tabcorp]** [REDACTED] in punter demand (turnover), in either state, in response to the **[Confidential to Tabcorp]** [REDACTED].

99. I have presented a more detailed assessment of these four changes in payout rates in Annex 1. By way of illustration, in regard to the first of these changes, the **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]

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[HIGHLY Confidential to Tabcorp]



100. I would like to compare turnover on win bets during the period in which [Confidential to Tabcorp] [REDACTED] payout rates were available, to the turnovers on win bets during comparable periods in which payout rates were [Confidential to Tabcorp] [REDACTED]. However, the turnover shown in Figure 13 appear to exhibit significant seasonality, with fluctuations in similar months each year, and moreover there appears to be a [HIGHLY Confidential to Tabcorp] [REDACTED] in the tote turnovers received from one year to the next. One way to accommodate the seasonality, is to compare each month with the same month in other years, i.e. to compare turnover in January 2009, with turnover in January 2008, January 2010 and January each year until January 2015. One way to accommodate the trend over time is to index the turnover in each month to the turnover in the December of each year – in this way it is possible to consider the turnover

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in January 2008 relative to turnover in December 2008, and to compare that to the turnover in January 2009 relative to turnover in December 2009, and thereby to abstract from longer term trends that cause the turnover in December 2009 to be **[HIGHLY Confidential to Tabcorp]** [REDACTED] than turnover in December 2008.

101. Figure 14 illustrates an attempt to accommodate these background effects of seasonality and trends in turnover over time, by showing monthly tote racing turnover on Win bets for races held in Australia in each month relative to the equivalent turnover in December of the same year for the period 2008 to 2015 for the New South Wales tote. The solid line indicates **[Confidential to Tabcorp]** [REDACTED]

[HIGHLY Confidential to Tabcorp] [REDACTED]



[REDACTED]

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102. Figure 14 shows that while there is significant variation, turnover was **[HIGHLY Confidential to Tabcorp]** [REDACTED] in periods where Tabcorp offered **[Confidential to Tabcorp]** [REDACTED], were **[HIGHLY Confidential to Tabcorp]** [REDACTED] compared to the same months in other years, relative to December of each year, implying that the changes in payout rates **[HIGHLY Confidential to Tabcorp]** [REDACTED] on turnover, at least in the short term.

103. These results, and the more detailed results presented in Annex 1, are consistent with Tabcorp's experience. In Tabcorp's experience, reducing take-out rates (i.e. increasing the payout rate) results in minimal increases in turnover, and is not profitable.⁴⁸

104. I next consider the potential effect of tote pool sizes on punter demand. I would expect punter demand for tote racing wagering to respond to changes in tote pools sizes. Specifically, I would expect demand to increase in response to an increase in tote pool sizes.

105. **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

106. Figure 15 shows the pool sizes for different bet types in each of the New South Wales and Victoria (SuperTAB) pools. These figures show the turnover on Australian racing arising from "local" contributions from the state that hosted the pool, the turnover from

⁴⁸ See Assumptions, paragraphs 147 and 148 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁴⁹ See List of new Tabcorp products, offers and takeout rate changes and applicable time periods (Tab 39 of PS-2 [TBP.015.001.3737]).

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other Australian states and territories which are co-mingled, and the turnover from international co-mingling (on those same Australian races).

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[HIGHLY Confidential to Tabcorp]



[REDACTED]

107. **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ⁵⁰

108. Figure 16 shows the contributions (i.e. turnover) to each of the New South Wales and Victoria totes operated by Tabcorp, for online racing tote wagering. I compare contributions from punters that chose to register and place tote bets into each tote in an attempt to control for any trends that might affect punters similarly across Australia.⁵¹

[HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]

⁵⁰ **[HIGHLY Confidential to Tabcorp – external counsel only]** [REDACTED]

⁵¹ It may be too simplistic to state that online tote racing wagering turnover increased for punters that chose to register and place bets into the Victoria tote, potentially in response to a change in the pool size of the Victoria tote, if that turnover was likely to have increased in any event (e.g. due to a shift in wagering turnover from retail to online channels, as discussed in Section III.D.v, above). If that trend were to apply similarly to punters that chose to register and place bets into the New South Wales tote, then a comparison of the trends in contributions to the two totes would isolate any effects that might result from a change in the pool size of the Victoria tote, from any effects that might result from the common trend.

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[REDACTED]

[REDACTED]

[HIGHLY Confidential to Tabcorp]

[REDACTED]

[REDACTED]

[REDACTED]

109. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

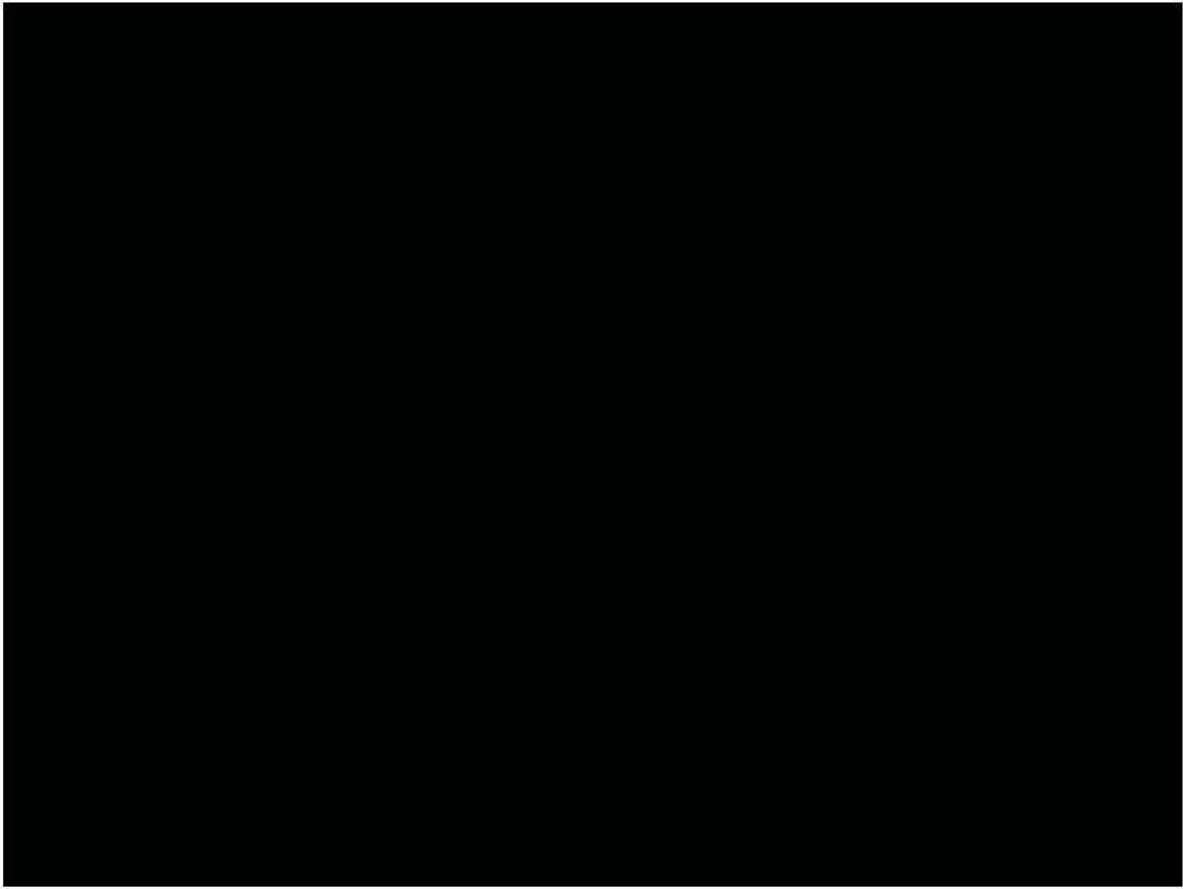
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110. There are no restrictions on the ability of a punter in one state to access a tote pool located in another state through the phone or online channel. A punter in Victoria could register an online account with Tabcorp to access the New South Wales pool and, similarly, a punter in New South Wales could register an online account with Tabcorp to access the Victoria pool.

111. The allocation of cross-state wagering turnover between the different Tabcorp pools (i.e. the SuperTAB (Victoria), and New South Wales pools), appears to be responsive to changes in the relative pool sizes between these two Tabcorp pools.

112. **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED] Figure 17 shows the proportions of online and phone (account) tote turnovers arising from punters domiciled in New South Wales that were placed into each of the Tabcorp tote pools, New South Wales or Victoria (SuperTAB), over the period FY 2008 to 2015.

[HIGHLY Confidential to Tabcorp]



113. [HIGHLY Confidential to Tabcorp]

[Redacted text block]

52

114. Figure 18 shows a similar analysis for punters domiciled in Victoria, i.e. the proportions of online and phone (account) tote turnovers arising from punters domiciled in Victoria, that were placed into each of the Tabcorp tote pools, New South Wales or Victoria (SuperTAB), over the period FY 2008 to 2015.

[HIGHLY Confidential to Tabcorp]



[Redacted text line]

- 115. [HIGHLY Confidential to Tabcorp] [Redacted text line]
[Redacted text line]
[Redacted text line]
[Redacted text line]
[Redacted text line]
[Redacted text line]
[Redacted text line]

116. Finally, Figure 19 shows a similar analysis for punters domiciled in the ACT, i.e. the proportions of online and phone (account) tote turnovers arising from punters domiciled in

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the ACT, that were placed into each of the Tabcorp tote pools, New South Wales or Victoria (SuperTAB), over the period FY 2008 to 2015.

[HIGHLY Confidential to Tabcorp]

[REDACTED]

117. [HIGHLY Confidential to Tabcorp]

[REDACTED]

118. These shifts in tote racing wagering turnover [HIGHLY Confidential to Tabcorp]

[REDACTED]. As noted above, in Figure 12,

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average payout rates have been [HIGHLY Confidential to Tabcorp] [REDACTED] for similar bet types, in each of the New South Wales and Victoria totes.

119. While the effective average payouts have been [HIGHLY Confidential to Tabcorp] [REDACTED] in Tabcorp's New South Wales tote pool and its Victoria tote pool, a [HIGHLY Confidential to Tabcorp] [REDACTED] punters domiciled in New South Wales, and the ACT, have chosen to bet into the larger Victoria (SuperTAB) Tabcorp pools over this period, while a [HIGHLY Confidential to Tabcorp] [REDACTED] punters domiciled in Victoria, have chosen to bet into the smaller New South Wales Tabcorp tote pools over this same period. These changes are more likely to have been driven by differences in pool sizes, as there were [HIGHLY Confidential to Tabcorp] [REDACTED] in average payout rates between these tote pools.
120. Based on the evidence available to me, it is difficult to discern a significant impact of changes in average tote payout rates on punter demand. Differences in tote pool sizes do appear to affect relative punter demand for different tote pools, in particular amongst the two Tabcorp tote pools.

III.E.ii. Fixed odds and tote bets

121. In addition to their tote wagering offerings, each party operates a single fixed odds book, and offers fixed odds bets on racing and sporting events.⁵³ In the retail and online channels, the parties each offer both tote and fixed odds bet types alongside one another, as shown in Figure 1 above.
122. In this section, I primarily focus on evidence regarding competitive interaction between the tote and fixed odds offerings within each of Tabcorp and Tatts. In Section III.F, I consider evidence of competitive interaction between the Tatts and the Tabcorp fixed odds and tote offerings. In order to focus on one of the channels in which the parties' tote

⁵³ See Assumptions, paragraphs 108 and 115 (Tab 1 of PS-2 [TBP.001.027.1974]).

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and fixed odds wagering services are most likely to interact, i.e. online, as opposed to retail, and in order to try and isolate the analysis from the trends of punter demand shifting between different channels, as discussed in Section III.D.v, above, in this section I present data focussed only on turnovers achieved in the online channel.

123. As noted above, the effects of price competition on punter demand for tote wagering appear to be difficult to detect in the short term. However, over the longer term, differences in payout rates do appear to affect punter demand for different bet types, i.e. fixed odds and tote bets.

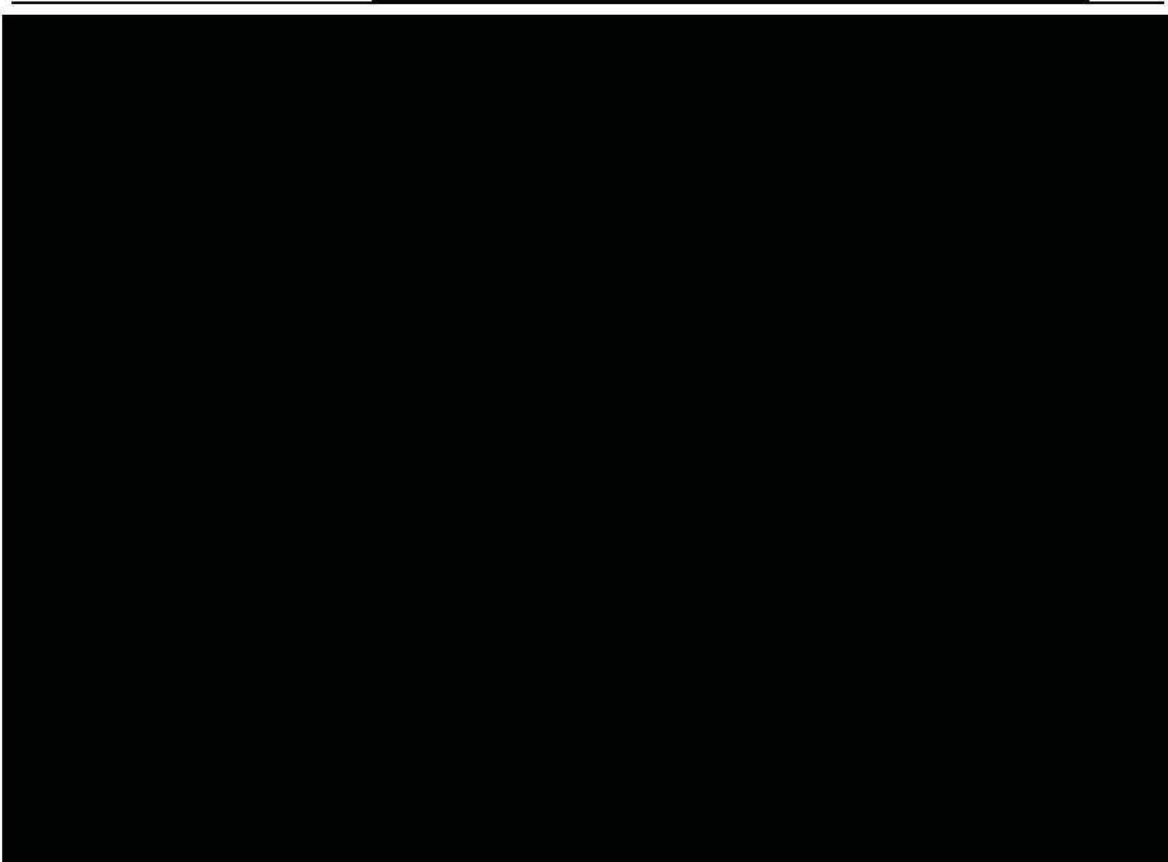
124. Figure 20 below shows Tabcorp's average monthly payout for different racing betting types from 2011 to 2016. **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[HIGHLY Confidential to Tabcorp]



[Redacted text block]

125. Figure 21 shows Tabcorp's online racing wagering turnover, split between tote and fixed odds bets over the period FY 2007-2016.

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[HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

126. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

127. Figure 22 below shows Tatts' average annual payout for different betting types from FY 2012 to 2016. [HIGHLY Confidential to Tatts] [REDACTED]

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[REDACTED]

[HIGHLY Confidential to Tatts]

[REDACTED]

[REDACTED]

128. Figure 23 shows Tatts' online racing wagering turnover, split between tote and fixed odds bets over the period FY 2012 to FY 2016.

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[HIGHLY Confidential to Tatts]

[REDACTED]

[REDACTED]

129. [HIGHLY Confidential to Tabcorp and Tatts]

[REDACTED]

[REDACTED]

[REDACTED] [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[HIGHLY Confidential to Tabcorp and Tatts]



[REDACTED]

130. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

[HIGHLY Confidential to Tatts] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

131. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED] [HIGHLY

Confidential to Tatts] [REDACTED]

[REDACTED]

[REDACTED] [HIGHLY Confidential to

Tabcorp] [REDACTED]

[REDACTED] [HIGHLY Confidential to Tatts] [REDACTED]

[REDACTED]

132. It is difficult to draw strong conclusions from the comparative performances of aggregated tote and fixed odds turnovers, within each operator, based on comparative changes in average payout rates, within each operator, over an extended period. [HIGHLY

Confidential to Tatts] [REDACTED]

[REDACTED]

[REDACTED].]

[HIGHLY Confidential to Tatts]

[REDACTED]

133. [HIGHLY Confidential to Tatts]

[REDACTED]

134. As discussed above, Tabcorp operates two tote pools, the Victoria (SuperTAB) pool and the New South Wales pool. Even within Tabcorp, the relative attractiveness of these two tote pools (in particular due to differences in their pool sizes) appears to have affected punter demand to place online fixed odds racing wagering bets in each state.

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135. The top chart in Figure 26, reproduces Figure 16, above, and shows the contributions (i.e. turnover) from punters who registered to bet into each of the New South Wales and Victoria totes operated by Tabcorp, for online tote racing wagering. The bottom chart in Figure 26, shows corresponding turnover on online fixed odds racing wagering, i.e. turnover from punters who register to bet with Tabcorp in each of New South Wales and Victoria. Again, I compare contributions from punters registered to place bets with Tabcorp in each state in an attempt to control for any trends that might affect punters similarly in each state.⁵⁴

⁵⁴ It may be too simplistic to state that online fixed odds racing wagering turnover did not increase as expected for punters that chose to register and place bets in Victoria, potentially in response to a change in the pool size of the Victoria tote, if that turnover was likely to have increased in any event (e.g. due to the nature of the trend by which punter demand is shifting in any event, from tote to fixed odds wagering products, as discussed in Section III.D.vi, above). If that trend were to apply similarly to punters that chose to register and place bets in New South Wales, then a comparison of the trends in the two states would isolate any effects that might result from a change in the pool size of the Victoria tote, from any effects that might result from the common trend.

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[HIGHLY Confidential to Tabcorp]



[REDACTED]

136. **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

136.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

136.2 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

136.3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵⁵

137. **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]
[REDACTED]

⁵⁵ Source: RBB Economics analysis of TBP.015.001.1839 – TBP.015.001.1843 data.

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[REDACTED]

[REDACTED]

[REDACTED]

138. I consider that there is evidence of competitive interaction between online tote and fixed odds racing wagering products, within each party's operations. Over the longer term, differences in average payout rates between online fixed odds and tote racing products are associated with differences in the relative growth rates of each of online fixed odds and online tote racing wagering. Moreover, differences in tote pool sizes, in part due to differences in co-mingling arrangements, are associated with differences in the relative growth rates of online fixed odds and tote racing wagering, within each party's operations. It is difficult to draw strong conclusions from the data and assumptions available to me, given that each of the relevant turnover series have been affected by trends over the relevant time periods (in particular online tote racing and online fixed odds racing wagering turnovers have generally grown over the past five years), and punter demand may have been affected by multiple factors, as discussed above.⁵⁶

III.E.iii. Wagering on racing and other wagering on other events

139. The parties, and the corporate bookmakers, each offer fixed odds betting on racing, as well as other wagering opportunities, in particular other sports.
140. Figure 27 shows the variation over time in Tabcorp's online fixed odds wagering turnover on three of the most popular sports codes, soccer, rugby league and basketball.

⁵⁶ See paragraph 91.

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[HIGHLY Confidential to Tabcorp]

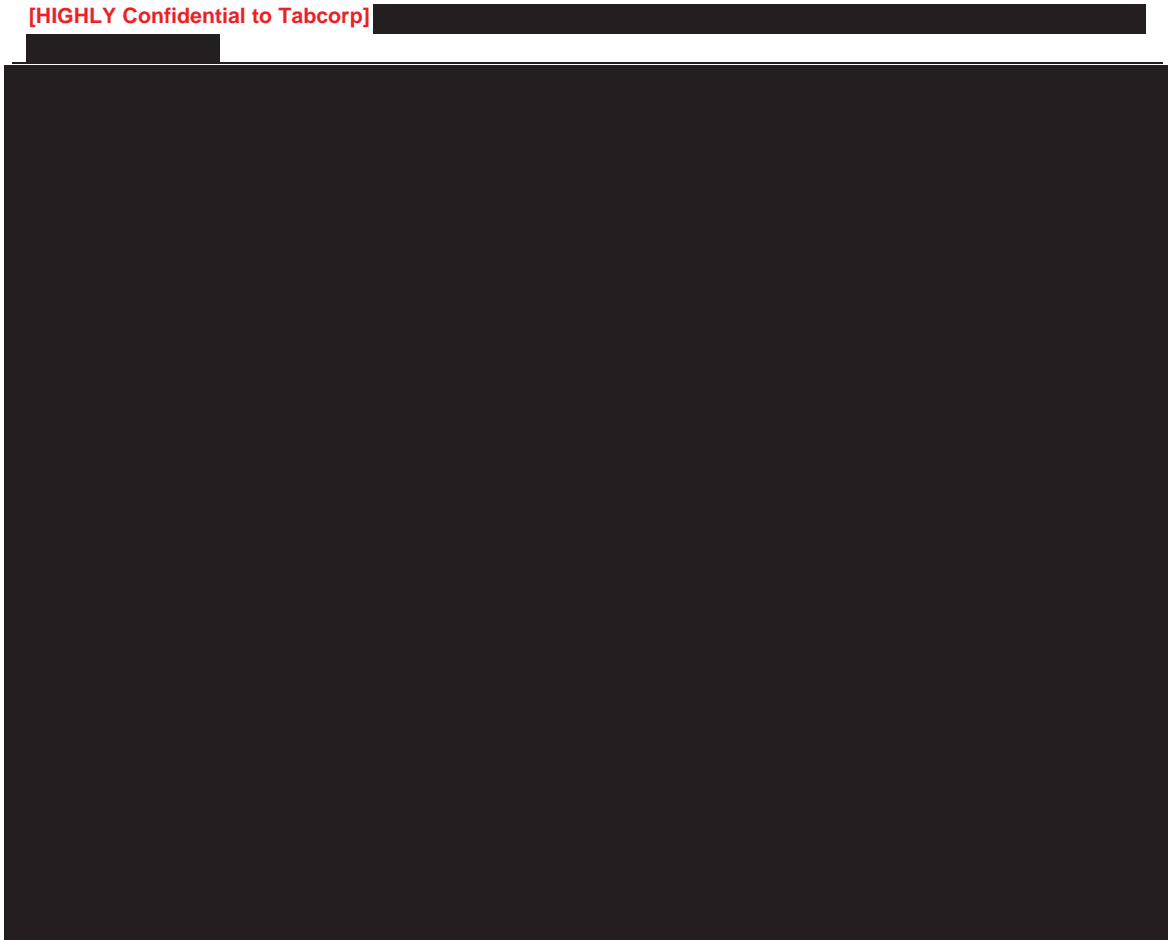


141. **Wagering** turnover on each sport shows significant variation over time, and appears to follow the seasons for the relevant sport. There appear to be peaks in the Southern Hemisphere winter for winter sports (for example, rugby league), and summer for sports played predominantly in the summer (for example, basketball).

142. Figure 28 shows the variation over time in Tabcorp's online fixed odds wagering turnover on racing.


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[HIGHLY Confidential to Tabcorp]



143. It appears that wagering turnover on racing also shows a seasonal pattern, with a large peak in the Southern Hemisphere spring, and a smaller peak in autumn, with a notable trough in winter. The seasonal patterns of wagering on racing and wagering on all sports are summarised in Figure 29 below.

[HIGHLY Confidential to Tabcorp]



144. Wagering on racing and sports appear to have different seasonal patterns.

145. Potential substitution between wagering on racing and wagering on sports could be explored by considering changes in relative turnovers in response to shocks (exogenous events that might affecting demand for one of either wagering on sports or wagering on racing). As a preliminary comment, online wagering on racing and online wagering on sports have each grown rapidly over the past decade (as shown in Figures 27 and Figures 28 and as discussed in Section III.D.vii), and these trends may make it more difficult to detect significant competitive interactions between these two offerings, in the

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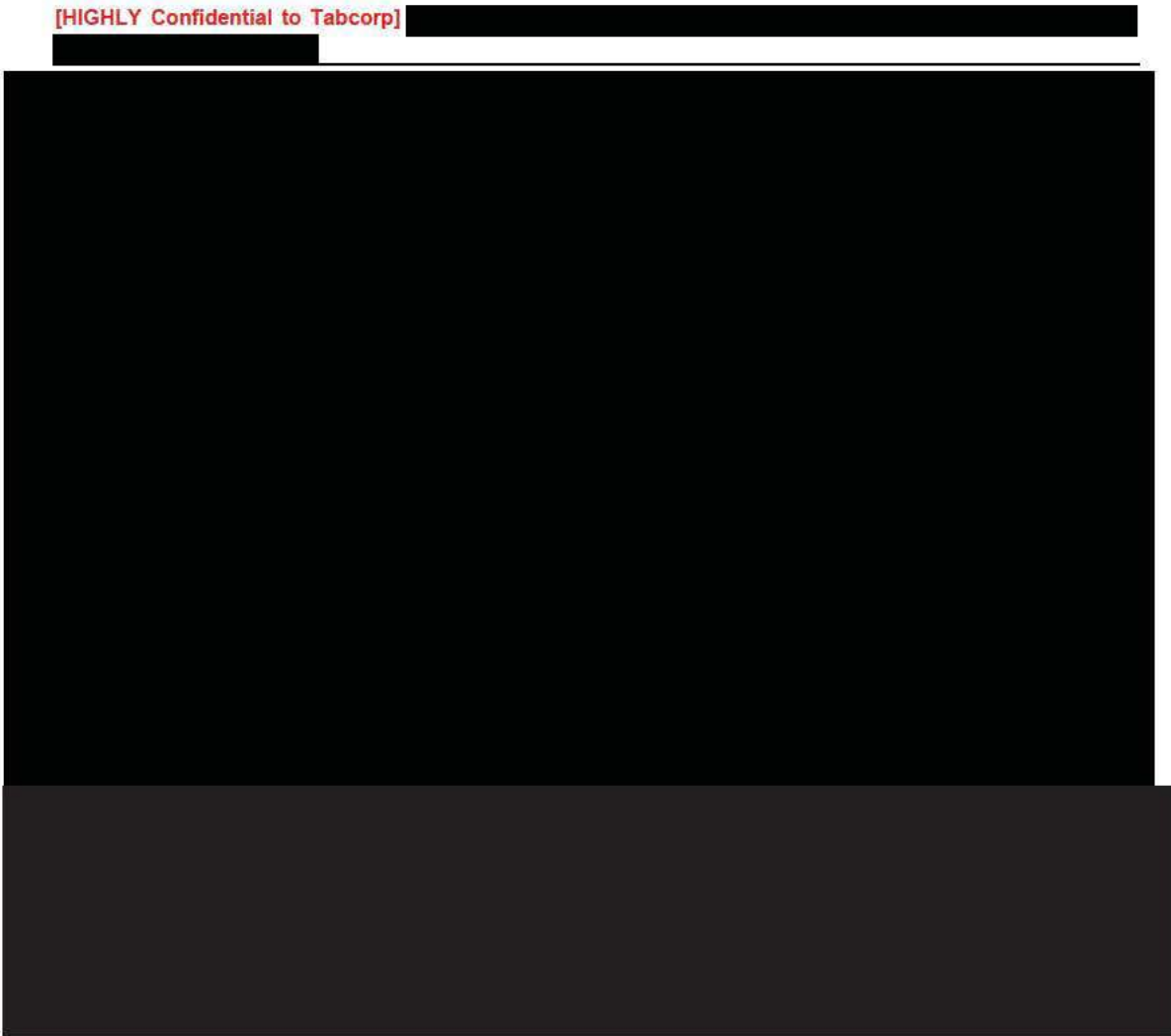
data available to me. Moreover, it may be difficult to identify suitable shocks, or events, that are both likely to prompt substitution between wagering on racing and wagering on sports, and are also likely to be exogenous. By way of example, an event such as a one off American football exhibition game, held in Sydney, might well be exogenous, and unanticipated by punters who would normally place bets on racing; however such an event may also be so unexpected, or such a niche interest, as to be unlikely to prompt material or observable substitution between wagering on racing and wagering on sports. By contrast, wagering on a regular season AFL game may be viewed by some punters as a substitute for wagering on racing, although as the AFL season is known in advance, punters may already have pre-allocated budgets to wagering on AFL games, and wagering on racing, such that it may be difficult to detect substitution in the available data. Additionally, identifying substitution may be further complicated by the different seasonal patterns displayed by racing and sports wagering as shown in Figure 29; an increase in wagering turnover on sports and a decrease in wagering turnover on racing may simply be caused by the different seasonal patterns for each wagering opportunity, as opposed to punter substitution.

146. Sports tournaments that occur only every four years may form suitable events for this type of analysis. Specifically, sports tournaments that cause a steep but short-lived peak in demand for sports betting may also be exogenous in their effects on racing wagering turnover. If there were meaningful substitution between wagering on these sports tournaments and wagering on racing, then the largest sports tournaments may be suitable events for such an analysis.
147. Soccer is one of the most popular sports for betting in Australia, **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED]
[REDACTED] The FIFA World Cup only takes place once every four years, in June and July, so betting turnover on the event is likely to be more concentrated compared to a more regularly occurring sports tournament, such as a regular season AFL game.

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148. Figure 30 shows Tabcorp's monthly online fixed odds wagering turnover on sports and racing from FY 2006 to FY 2016, and the vertical red lines indicate June in the FIFA World Cup years (2006, 2010 and 2014).

[HIGHLY Confidential to Tabcorp]



149. Figure 30 [HIGHLY Confidential to Tabcorp]



150. Figure 31 [HIGHLY Confidential to Tabcorp]



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[REDACTED]

[REDACTED]

[REDACTED] The solid lines for 2010 and 2014 indicate the years in which the FIFA World Cup was held, while the dashed lines show the surrounding years.

[HIGHLY Confidential to Tabcorp]



151. Figure 31 [HIGHLY Confidential to Tabcorp]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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152. Any effect of sports wagering on racing wagering may be understated due to seasonal effects. Racing wagering demand is typically relatively low in June compared to the end of the calendar year, meaning that substitution away from racing wagering may appear weaker at that time of year. Moreover, even for periodic tournaments, such as the FIFA World Cup, punters may have anticipated the wagering opportunities that would exist during the tournament, and may have spread any reduction in racing wagering turnovers over a period longer than the tournament itself, making it additionally difficult to detect any effect.
153. As noted above, trends of shifting demand from tote to fixed odds wagering, and from retail to online channels may also make it more difficult to detect any potential switching between online fixed odds racing wagering and online fixed odds sports wagering.
154. While there was a [HIGHLY Confidential to Tabcorp] ██████████ in racing wagering turnover during the FIFA World Cup in 2010 and 2014, based on the data available to me I have not been able to conclude as to whether or not there is any significant competitive interaction between racing wagering and sports wagering. In particular there appear to be multiple potentially confounding factors.

III.F. Competition between the parties

III.F.i. Limited scope for competition – tote racing wagering

155. As noted above, there are no restrictions on the ability of a punter in one state to access a tote pool located in another state through the phone or digital channel. A punter domiciled in a state in which Tatts is the local retail licensee, such as South Australia, could register an online account with Tabcorp to access the New South Wales pool and, similarly, a punter domiciled in New South Wales could register an online account with Tatts in South Australia, to place tote bets into the South Australia tote, and thereby access the Tatts pool. This means that, at least in theory, the SuperTAB (Victoria) and

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New South Wales tote pools, as well as Tatts' UBET pool, could all compete against one another to attract online punters.

156. However, as an empirical matter, even within channels where punters are able to bet outside their state of domicile (primarily online and phone, via accounts), the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters choose to place tote bets into their "home tote", i.e. the tote operated by the party licensed to provide tote bets in the retail channel in the state in which those punters are domiciled.
157. Figure 32 shows the online and phone (account) tote racing wagering turnover originating from punters domiciled in each state, according to the tote pools into which those punters have registered and chosen to place their tote bets.

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

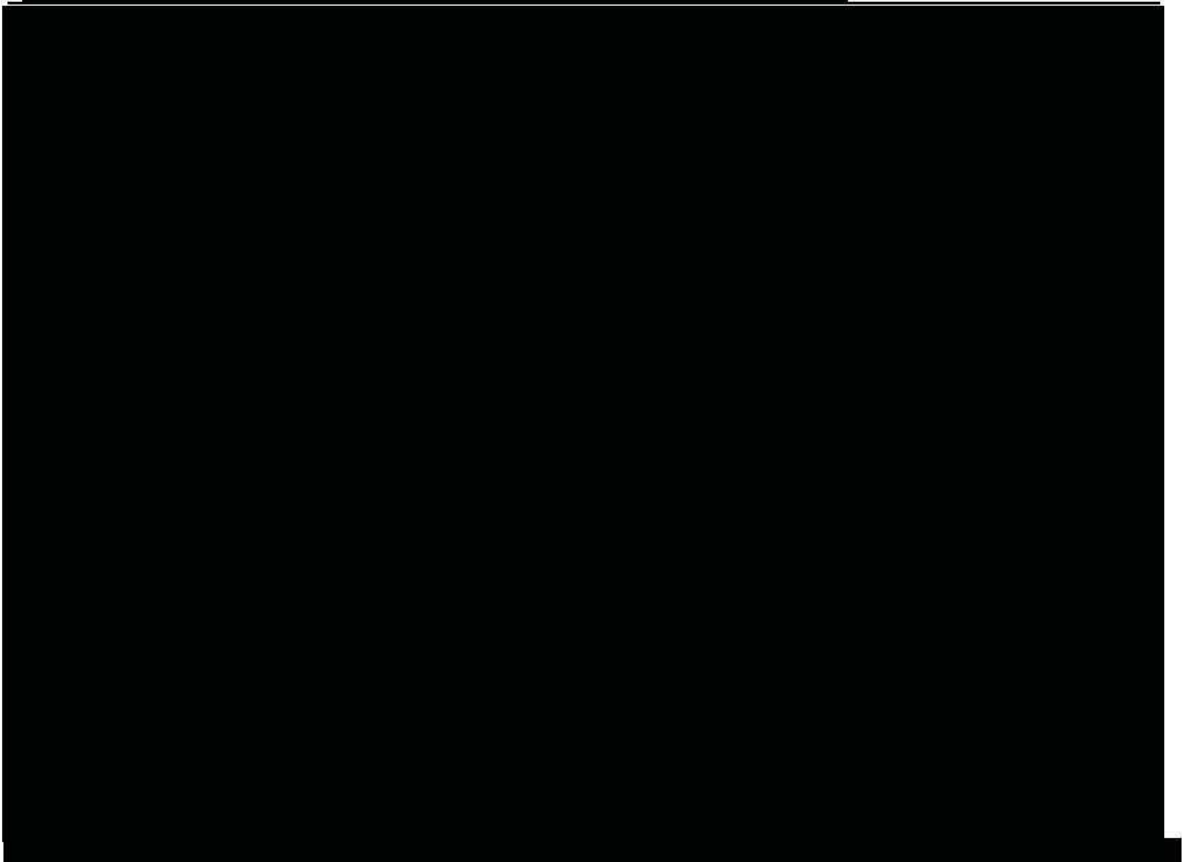


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- [REDACTED]
158. The **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of punters have chosen to bet into their home tote pools, despite **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] and co-mingling arrangements applied in each of the three totes. **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] [REDACTED] punters has chosen to bet into either their home tote pools, or another tote pool operated by the same company (for example, a Victoria-domiciled punter betting into Tabcorp's New South Wales pool).
159. In states and territories where Tatts is the local retail licensee, a **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] proportion of punters choose to bet in out of state tote pools, in particular betting in to the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED]
160. Figure 33 shows the proportion of online and phone (account) tote racing turnover placed by punters domiciled in each state, according to whether punters chose to place those bets in the tote operated by the local retail tote licensee, or a tote operator licensed in another state. Accordingly, Figure 33 shows the same data as shown in Figure 32, but normalised, and shown as percentages for turnover placed by punters domiciled in each state.

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[HIGHLY Confidential to Tabcorp and Tatts]



161. While [HIGHLY Confidential to Tabcorp and Tatts] of punters domiciled in states and territories where Tabcorp is the local retail licensee have chosen to place online and phone (account) tote bets into the smaller Tatts tote pools, [HIGHLY Confidential to Tabcorp and Tatts] of punters located in states and territories where Tatts is the local retail licensee have chosen to place online and phone (account) tote bets into the larger Tabcorp tote pools.⁵⁷

162. This observation does not appear to have been driven by differences in average payout rates. Based on the information available to me, average payout rates for Tatts' tote

⁵⁷ See Figure 35.

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racing bets were [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] than average payout rates for Tabcorp's tote racing bets throughout this period. Figure 34 shows the payout rates offered by Tatts on tote racing wagering products, compared to the payout rates offered by Tabcorp.

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]



163. The [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED] observed in Figure 34 could be affected by a number of factors. First, as shown in Figure 11 and Figure 12, if punters placing bets in different tote pools demand a different mixture of bet types, then the average payout rate across all bet types might be different, even if the payout rates that correspond to each bet type are identical in the two different tote pools. I do not have access to sufficiently disaggregated data on

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Tatts' tote wagering activities to estimate the size of this effect. Second, each of Tabcorp and Tatts offer [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED]⁵⁸ I do not have access to sufficiently disaggregated data to analyse whether or not differences in the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] might affect the average payout rates observed in Figure 34, or affect cross-state wagering.

164. Despite average payout rates appearing [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] for Tatts than for Tabcorp, [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED], proportion of punters located in the states and territories where Tatts is the local retail licensee choose to bet into the Tabcorp tote pools. Accordingly, differences in payout rates do not appear to be a significant driver of cross-state wagering.
165. Rather, the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] cross-state betting that are observed appear to be driven by the different tote pool sizes. Figure 35 shows the total annual turnover of each of the tote pools operated in Australia. The turnover for Tabcorp's Victoria (SuperTAB) tote pool is [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED] [REDACTED]

⁵⁸ See Assumptions, paragraphs 106, 153 (j) and 146(g) (Tab 1 of PS-2 [TBP.001.027.1974]).

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[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

166. This [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] practice of punters domiciled in one state betting into the pools of the tote operator that has a retail licence in another state, appears to be [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]. Despite the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED] Tabcorp tote pools, there has [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] the proportion of online and phone (account) tote bets placed in Tabcorp pools, by punters domiciled in states and territories where Tatts is the local retail licensee. Figure 36 shows the proportion of tote racing bets placed in the other party's tote pools over time, for each of punters domiciled in states and territories where Tabcorp is the local retail licensee, and punters domiciled in states and territories where Tatts in the local retail licensee.

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[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

167. Based on the evidence available to me, it is difficult to discern significant competitive interaction between the parties' tote bet offerings. The [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] tote payout rates that are observed between the parties' tote pools do not appear to affect relative punter demand for different tote pools.

168. Differences in tote pool sizes do appear to affect relative punter demand for different tote pools. There appears to be a [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED] punters that choose to bet in the pools of the party that is not their local retail licensee. This proportion of wagering activity does not appear to respond to the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] differences in pool sizes

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between the Tabcorp and Tatts pools. Moreover, I am not aware of obvious options available to Tatts that could readily and significantly affect the relative pool sizes of the Tatts pool and the Tabcorp pools.

169. The **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] turnover that indicates punters betting into pools not operated by their home tote pool operator may be significantly explained by large punters. Large punters often bet into all Australian tote pools (and even some international pools) on the same event.⁵⁹ As discussed in Section III.D.iv above, I consider that large punters would have the strongest incentives to bet into multiple pools, even for the same betting opportunity, in order to achieve much of the benefits of co-mingling across these different pools. Large punters are likely to be most aware of the benefits of betting into deeper pools, and betting into multiple pools for the same betting opportunity, as large bets will have the greatest negative effect on tote payout rates for the punter concerned, especially within smaller pools. In the case of large punters betting across pools in order to achieve the benefits of co-mingling, these different tote pools would not be competing with one another, but are rather offering the same punter two independent pools in which to place his bets, to allow him to spread the effect of his bets across the different pools.
170. Punters that choose to place bets in the pools of the party that is not their local retail licensee are likely to be better informed regarding their online options for wagering on racing. In the first instance, this **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] [REDACTED] punters that do place tote bets in the pools of the party that is not their local retail licensee already display an awareness of options to place bets with out-of-state operators. In particular for large punters, that have the incentives to place bets into multiple pools, and that often bet into all Australian tote pools (and some international pools), this awareness of alternatives is unlikely to stop at the wagering offerings of the

⁵⁹ See Assumptions, paragraph 34 (Tab 1 of PS-2 [TBP.001.027.1974]).

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two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.

III.F.ii. Limited scope for competition – fixed odds racing wagering

171. As in the case of tote wagering, there are no restrictions on the ability of a punter in one state to access an online fixed odds operator located in another state through the phone or digital channel. A punter domiciled in a state in which Tatts is the local retail licensee, such as South Australia, could register an online account with Tabcorp to access Tabcorp's online fixed odds offerings and, similarly, a punter domiciled in a state in which Tabcorp is the local retail licensee, such as New South Wales, could register an online account with Tatts in South Australia, to access Tatts' fixed odds offerings. This means that, at least in theory, the online and phone fixed odds racing wagering products of each of Tabcorp and Tatts could compete with one another, and with each party's online and phone tote wagering products.
172. However, as in the case of tote wagering, as an empirical matter, even within channels where punters are able to bet outside their state of domicile (primarily online and phone, via accounts), the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters who choose to place fixed odds bets with either party, choose to place those fixed odds bets with the operator licensed to provide fixed odds bets in the off-course retail channel in the state in which those punters are domiciled.
173. Figure 37 shows the proportion of online and phone (account) fixed odds bets placed by punters domiciled in each state, according to whether punters chose to place those bets with the fixed odds operations of the local retail licensee, or the fixed odds operation of the other party.

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[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

174. Again, despite both parties offering online and phone (account) fixed odds bets to punters throughout Australia, [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters who choose to place online or phone (account) fixed odds racing bets with either party, choose to place online and phone (account) fixed odds racing bets only with the local operator of fixed odds services in the off-line physical retail environment.⁶⁰

175. Considering only the turnover placed with one of the parties (as discussed further below, turnover placed with corporate bookmakers was far larger), in FY 2016, [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of turnover from punters domiciled in states

⁶⁰ A similar pattern is observed in respect of sports wagering.

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and territories where Tabcorp is the local retail licensee was placed in online and phone (account) fixed odds bets with Tatts; **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of turnover from punters domiciled in states and territories where Tatts is the local retail licensee was placed in online and phone (account) fixed odds bets with Tabcorp.⁶¹

176. This observation does not appear to have been driven by **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] fixed odds payout rates between the parties. Figure 38 shows the payout rates offered by Tatts on fixed odds products, compared to the payout rates offered by Tabcorp. Tatts offered **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] payout rates in particular over the period 2013-2015.



⁶¹ See Figure 42.

[REDACTED]

177. [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

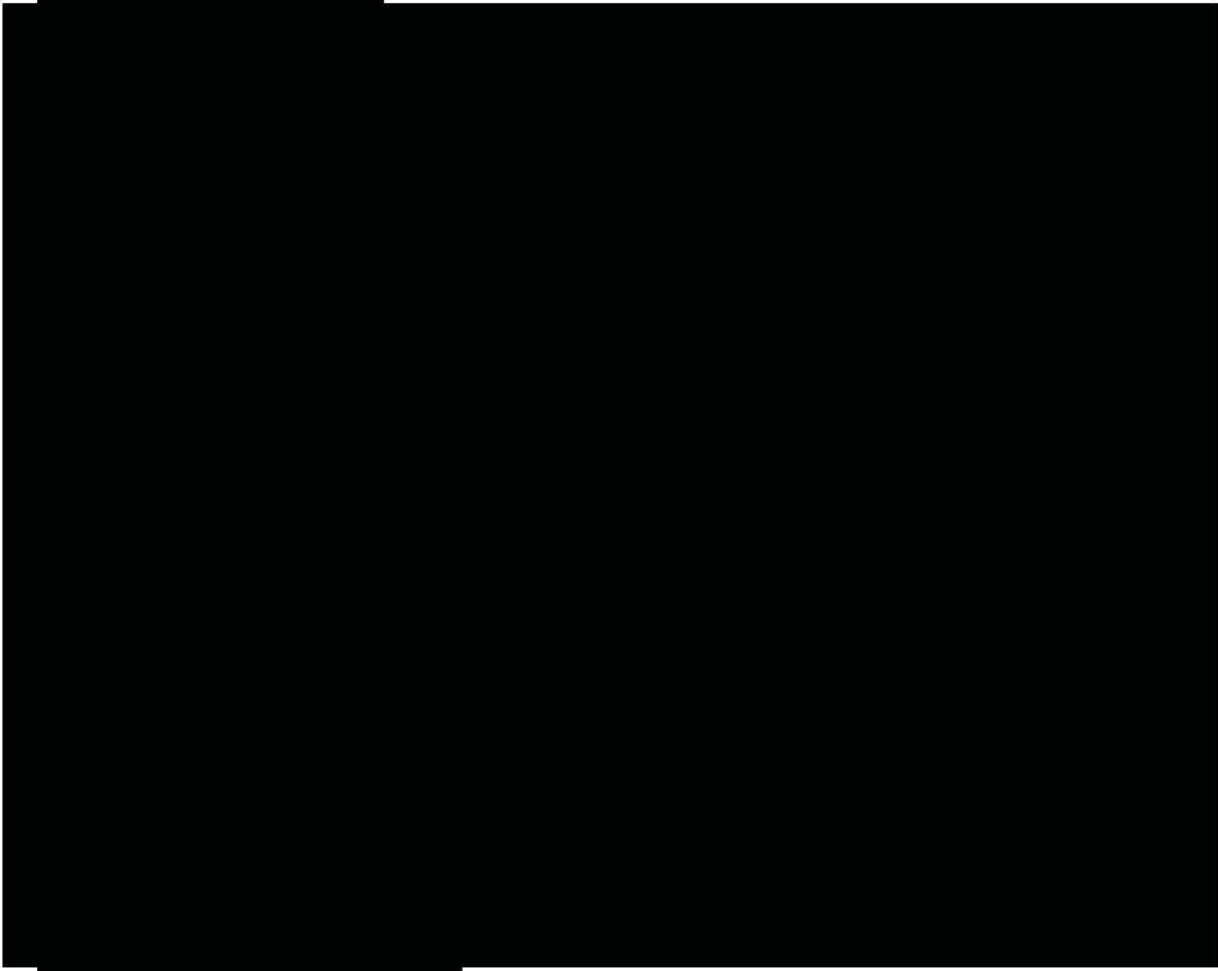
[REDACTED]

[REDACTED]

178. This [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters domiciled in one state betting into the fixed odds operations of the operator that has a retail licence in another state, appears to be [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]. Figure 39 shows the proportion of fixed odds bets placed in the other party's fixed odds operations over time, for each of punters domiciled in states and territories where Tabcorp is the local retail licensee, and punters domiciled in states and territories where Tatts is the local retail licensee. Despite the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates offered by Tatts, there has not been a [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] the proportion of online and phone (account) fixed odds bets placed with Tatts, by punters domiciled in the states and territories where Tabcorp is the local retail licensee.

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[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]



179. There appears to be [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters that choose to bet in the fixed odds operations of the party that is not their local retail licensee, and this proportion of wagering activity does not appear to respond to the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates between the Tabcorp and Tatts fixed odds operations.

180. Based on the evidence available to me, it is difficult to discern a significant competitive interaction between the parties' fixed odds racing wagering offerings. The [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates that are observed [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

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do not appear to affect relative punter demand for the parties' different fixed odds offerings.

181. Punters that choose to place bets with the party that is not their local retail licensee are more likely to be better informed regarding their online options for wagering on racing. In the first instance, this **[HIGHLY Confidential to Tabcorp and Tatts]** punters that do place fixed odds bets with the party that is not their local retail licensee already display an awareness of options to place bets with out-of-state operators.
182. As discussed above in Section III.D.iii above, fixed odds bookmakers, including the parties, invest in customer risk management capabilities, and in particular may attempt to manage certain higher risk bet and customer types, monitoring customers' transactions and betting behaviours, which may result in bookmakers refusing to accept some types of bets, from some customers.⁶² Larger and more successful punters will have the greatest incentives to place bets with multiple fixed odds operations over time.
183. There are some indications that punters who choose to place fixed odds bets with the party that is not their local retail licensee achieve **[HIGHLY Confidential to Tabcorp and Tatts]** payout rates.
184. Figure 40 shows the payout rates for punters that registered to place online and phone fixed odds racing bets with Tatts in a state that was not their state of domicile ("out of state") compared with the payout rates for punters that registered to place online and phone fixed odds racing bets with Tatts in the same state in which they were domiciled ("home state"). **[HIGHLY Confidential to Tatts]**

⁶² See Assumptions, paragraph 109 (Tab 1 of PS-2 [TBP.001.027.1974]).

[HIGHLY Confidential to Tatts]



185. Accordingly these “out of state” punters have the strongest incentives to be aware of, and utilise alternative fixed odds operations over time. In particular for larger and more successful punters, this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.

186. The same group of punters that might potentially be affected by the merger (because these punters place bets “out of state”, they might consider choosing between the parties’ online fixed odds offerings), are likely to be better informed regarding their online options for wagering on racing, and are therefore less likely to be adversely affected by any putative adverse effects of the merger.

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187. In conclusion, it appears that there is limited scope for competition between the parties' wagering services, and that the parties are relatively distant competitors with one another, even in the online and phone channels.

III.F.iii. Luxbet

188. Luxbet, a wholly owned subsidiary of Tabcorp, is a corporate bookmaker licensed in the Northern Territory, which offers fixed odds betting and tote derivative products on racing, and fixed odds betting on licensed sports and novelty events. Luxbet provides its service online and by telephone.⁶³ There could be an overlap between the online wagering activities of Luxbet, and the online activities of Tatts.

189. However, I consider that the competitive interaction between Tatts and Luxbet is unlikely to significantly affect the overall competitive assessment.

190. First, Luxbet only accounts for a limited share of corporate bookmaker turnover on a national basis at around [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of online and phone wagering turnover on racing, and around [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of online wagering turnover across all betting opportunities (racing and sports).⁶⁴

191. Second, Tatts also only accounts for a limited share of online and phone wagering activity nationally – [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of online and phone wagering turnover on racing, and [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of total online and phone wagering turnover (on racing and sports).⁶⁵

192. Third, Luxbet and Tatts are unlikely to be particularly close competitors. Luxbet would only be likely to constitute a relevant increment in market share for punters in states and

⁶³ See Assumptions, paragraph 113 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁶⁴ RBB Economics analysis of TBP.001.018.5686, TBP.001.022.0002 and TAT.001.015.0804.

⁶⁵ Although, Tatts' share of online wagering turnover in states and territories in which it is the retail licensee is likely to be higher than this. I do not have data on the geographic distribution of the turnover of Luxbet or the other corporate bookmakers. (RBB Economics analysis of TBP.001.018.5686, TBP.001.022.0002 and TAT.001.015.0804.)

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territories where Tatts is the licensee – given that Tatts has only a limited presence, even online, for punters domiciled in states and territories in which Tabcorp is the licensee. Luxbet is likely to generate the majority of its revenues in the states that account for the largest share of the parties' online racing wagering turnover, New South Wales and Victoria. However these are states in which Tabcorp's online TAB operations already overlap with those of Luxbet, and Tatts' has a very limited online presence. Accordingly, the majority of Luxbet's turnover is likely to be in states in which Tatts has a very limited presence.

193. Fourth, and as discussed further below, the parties each experience higher marginal costs than corporate bookmakers, because of different operating models, higher taxes and higher funding obligations to the racing industry.⁶⁶ The different operating models of Tatts and Luxbet are likely to further differentiate their wagering offerings.

194. On the basis of the evidence available to me, I do not think that Luxbet would materially alter the conclusions above.

III.G. Competition between the parties and corporate bookmakers

195. There are currently 17 corporate bookmakers, mostly licensed in the Northern Territory, that provide fixed odds and tote derivative fixed odds products across Australia by telephone or via the internet.⁶⁷

196. As noted above, corporate bookmakers offer fixed odds bets on many of the same underlying betting opportunities (for example, horse races) as those covered by the parties' tote (and fixed odds) products, and also offer tote derivative fixed odds wagering products.

⁶⁶ See Assumptions, paragraph 121 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁶⁷ See Assumptions, paragraph 119 (Tab 1 of PS-2 [TBP.001.027.1974]).

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197. Corporate bookmakers quote odds alongside one another for each of fixed odds, and tote derivative fixed odds wagering products, and a number of odds comparison services exist that directly compare odds available across various fixed odds and tote services.
198. Bookmakers choose between using the tote, other bookmakers or a betting exchange to lay off risks that they are exposed to. Bookmakers can mitigate their exposure to bets placed by punters by betting back into a tote pool or by placing similar bets with other bookmakers.⁶⁸
199. Some of the largest corporate bookmakers are owned by multinational bookmakers with access to substantial funding for promotion and expansion, such as Paddy Power (which also acquired Betfair Australia in 2016), Bet365, William Hill, Ladbrokes and Unibet.⁶⁹ Some key events include the following.
- 199.1. Paddy Power acquired 51% of Sportsbet in 2009 (the leading corporate bookmaker in Australia), which then acquired a rival corporate bookmaker in Australia, International All Sports (“IAS”).⁷⁰ Paddy Power aimed to grow at the expense of TABs: *“The combined brands hold a strong leadership position within the online corporate bookmaking market; however when the online share of the TABs (i.e. the licensed retail monopolies) are included, our share is lower, leaving substantial scope for growth.”*⁷¹ Paddy Power acquired the remaining shares of Sportsbet in March 2011.⁷² Sportsbet more than doubled its marketing spend from FY 2013 to 2015 with the highest share of above the line media spend and known

⁶⁸ See Assumptions, paragraph 42 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁶⁹ See Assumptions, paragraph 120 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁷⁰ See Paddy Power, Annual Report, 2008 (reference in Annex 2), pages 3, 8 and 18.

⁷¹ See Paddy Power, Annual Report, 2008 (reference in Annex 2), page 20. Similarly, the Paddy Power Annual Report for 2010 (reference in Annex 2) states at page 12: *“The Sportsbet brand holds a clear leadership position versus other online corporate bookmakers; however when the online share of the TABs (the licensed retail monopolies) are added, our share is lowered, leaving substantial scope for growth.”*

⁷² See Paddy Power, Annual Report, 2011 (reference in Annex 2), page 101.

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sponsorship.⁷³ Sportsbet increased its brand awareness beyond that of Tabcorp's TAB in the second half of 2013.⁷⁴

199.2. William Hill acquired two Australian corporate bookmakers in 2013, Sportingbet (which had acquired Centrebet two years prior) and tomwaterhouse.com.⁷⁵ It launched the William Hill brand in Australia in February 2015 and migrated Sportingbet customers in March 2015 and tomwaterhouse.com customers in January 2016 to the William Hill brand. Its prompted brand awareness increased from 32% to 63% between March 2015 and February 2016, and spontaneous awareness rose from 12% to 32% in the same period.⁷⁶

199.3. Ladbrokes entered the Australian market in 2013 through its acquisition of Gaming Investments.⁷⁷ It launched the Ladbrokes brand and gained 25% awareness despite having no prior physical presence in Australia.⁷⁸

199.4. Unibet bought Australian corporate bookmaker Betchoice in February 2012 and relaunched it as Unibet Australia by 15 May 2012.⁷⁹ In June 2014, Unibet transitioned Australian customers from the Betchoice platform to the Unibet global platform.⁸⁰

199.5. Bet 365 is a privately held UK-based gambling company and obtained its Australian bookmaking licence in February 2011. It offers fixed odds bets on thoroughbred, harness and greyhound racing and on a range of domestic and international sporting events, while also offering live streaming of over 50,000

⁷³ See Assumptions, paragraph 120(a) (Tab 1 of PS-2 [TBP.001.027.1974]).

⁷⁴ See Paddy Power, Annual Report, 2014 (reference in Annex 2), page 19.

⁷⁵ See Assumptions, paragraph 120(c) (Tab 1 of PS-2 [TBP.001.027.1974]).

⁷⁶ See William Hill, Annual Report 2015 (reference in Annex 2), pages 15 and 32.

⁷⁷ See Ladbrokes, Annual Report, 2013 (reference in Annex 2), page 9.

⁷⁸ See Ladbrokes, Annual Report, 2013 (reference in Annex 2), page 11.

⁷⁹ See Unibet, Annual Report 2012 (reference in Annex 2), pages 8 and 21.

⁸⁰ See Unibet, Annual Report (reference in Annex 2), page 21.

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events to computers and mobile devices. It now accounts for 13% of online wagering in the Australia.⁸¹

200. Each of the parties has undertaken various strategic initiatives in order to respond to increased competition from corporate bookmakers.

201. Tabcorp regularly monitors the activity of corporate bookmakers in Australia, including their advertising spend, advertisements, promotional activity, competitive activities, such as new products or sponsorships.⁸²

202. Tabcorp has adopted a number of strategic initiatives, designed to strengthen its overall totalisator and fixed odds offering in response to increased competition from corporate bookmakers. These include:

202.1. launching its own corporate bookmaker, Luxbet, in September 2008;

202.2. investing in its infrastructure, retail outlets and digital offerings;

202.3. expanding its local and international co-mingling arrangements, introducing guaranteed minimum pool sizes for certain exotic bet types, and investing in new tote co-mingling solutions;

202.4. introducing new wagering products and bet types; and

202.5. investing in new promotions, loyalty programmes and other marketing activities.

202.6. **[Confidential to Tabcorp]** [REDACTED]

[REDACTED]⁸³

203. **[HIGHLY Confidential to Tatts]** [REDACTED]
[REDACTED]

⁸¹ See Assumptions, paragraph 120(b) (Tab 1 of PS-2 [TBP.001.027.1974]).

⁸² See Assumptions, paragraphs 145 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁸³ See Assumptions, paragraphs 146, and 149 -151 (Tab 1 of PS-2 [TBP.001.027.1974]).

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸⁴

204. Tatts has also adopted a number of strategic initiatives, designed to strengthen its overall totalisator and fixed odds offerings to compete with corporate bookmakers. These include:

204.1. investing in its branding, new promotions, affiliate, loyalty programmes and other marketing activities;

204.2. investing in its infrastructure, retail and digital offerings;

204.3. investing in the quality of its fixed odds offering; and

204.4. introducing new wagering products and bet types.⁸⁵

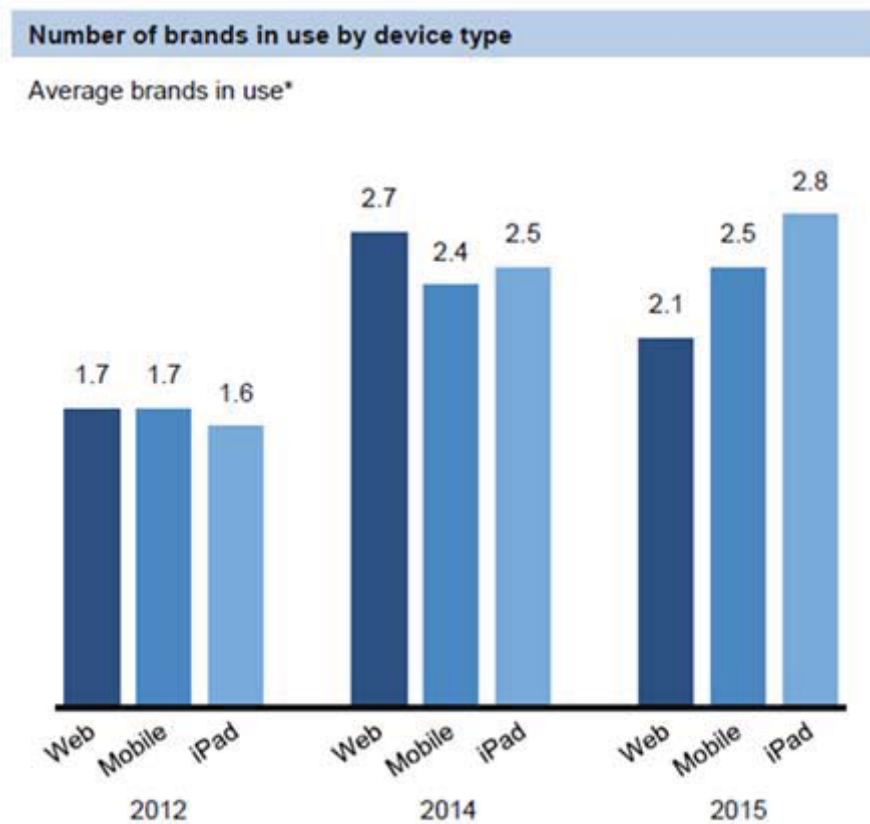
205. Punters tend to experiment by using more than one brand to place their bets in online channels, and this trend is increasing over time as shown in Figure 41 below.

⁸⁴ See Assumptions, paragraphs 152 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁸⁵ See Assumptions, paragraphs 153 (Tab 1 of PS-2 [TBP.001.027.1974]).

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Figure 41: Number of brands in use by device type



* 2013 data unavailable

** Mobile represents the average of iPhone, Android and iPad users

Source: Digital Tracker (The Leading Edge Dec '15)

Source: Assumptions, paragraph 130 (Tabs 1 of PS-2 [TBP.001.027.1974]).

206. In this environment, I would expect wagering operators to compete vigorously for online punters. Corporate bookmakers spend significantly on advertising, promotions, branding and sponsorships.⁸⁶ Each of the parties has engaged in various strategic initiatives to compete more effectively with corporate bookmakers.⁸⁷

207. Corporate bookmakers, which solely operate in the online and phone channels, have grown their turnovers on each of racing and sports betting, substantially over the past decade.

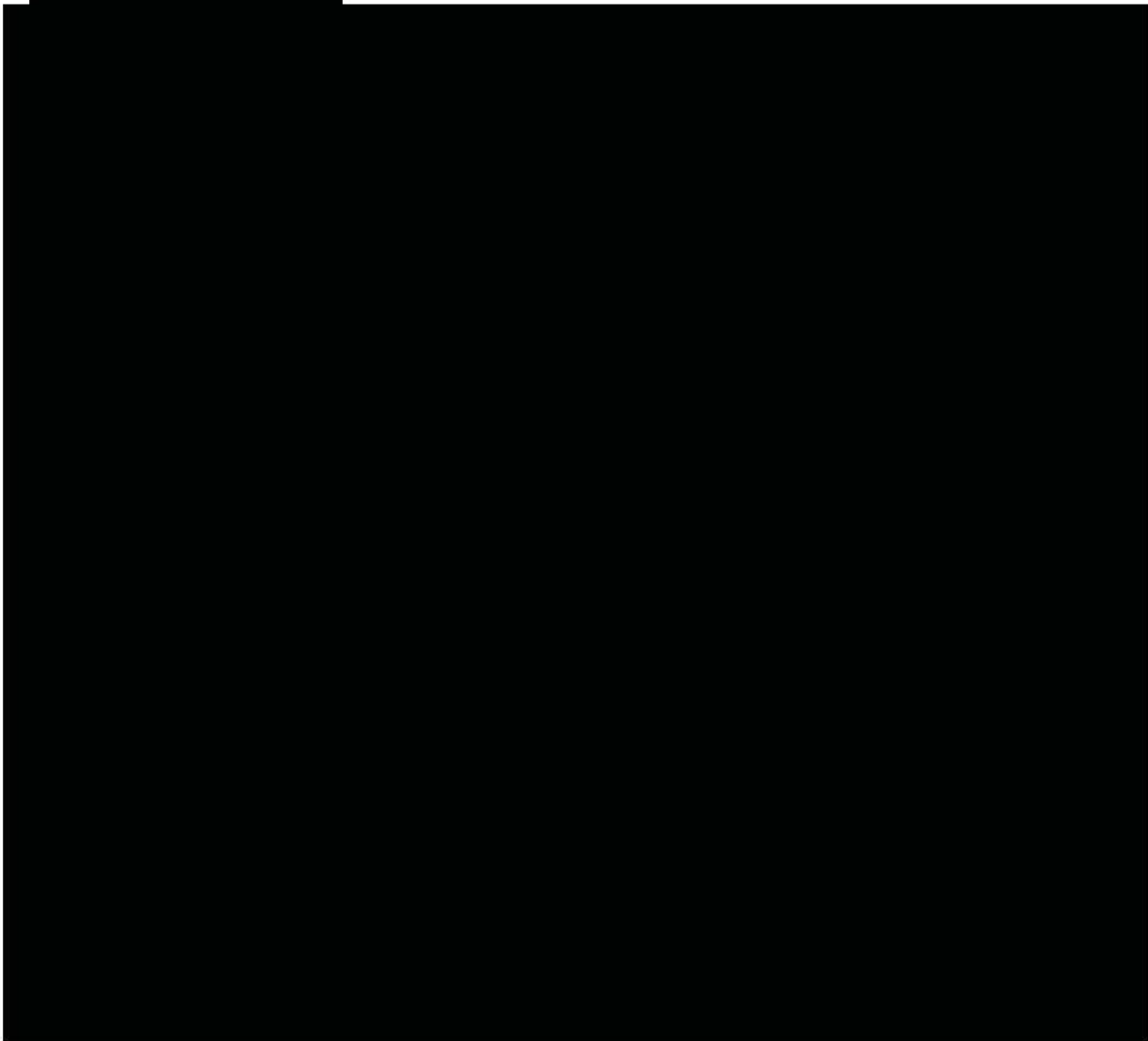
⁸⁶ See Assumptions, paragraph 120 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁸⁷ See Assumptions, paragraphs 145-153 (Tab 1 of PS-2 [TBP.001.027.1974]).

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208. Figure 42 shows online and phone racing wagering turnover, split between the parties' tote and fixed odds services, the Western Australian tote offering, and the corporate bookmakers.

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]



209. There has been far larger growth in online and phone racing wagering turnover for the corporate bookmakers, than for the parties. Corporate bookmakers have increased their racing wagering turnover from [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED] [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] **[HIGHLY Confidential to Tabcorp]**

[REDACTED] **[HIGHLY Confidential to Tatts]** [REDACTED]

[REDACTED]⁸⁸

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

211. I do not have access to data on corporate bookmakers' online and phone wagering turnover at state level. However, as most of the corporate bookmakers are licensed to operate from the Northern Territory, it seems reasonable to consider the distribution of the corporate bookmakers' turnover across states based on the distribution of punters' turnover with other parties in each state. On that basis, the corporate bookmakers are likely to present a far more substantial and closer competitive constraint to each of the parties that is the local retail licensee, than the other party. In particular the corporate bookmakers' online racing wagering turnover is likely to be **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] the increment that would be brought about by the merger, for punters domiciled in each state. In contrast to the parties, which only **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED], and each only achieve **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] online and phone (account) racing wagering turnovers in states in which the other party is the local retail licensee, the corporate bookmakers are likely to achieve a significant share of racing wagering turnovers in each state.

⁸⁸ RBB Economics analysis of TBP.001.022.0002, TBP.001.018.5686 and TAT.001.015.0804 data. Since TBP.001.022.0002 does not distinguish Luxbet turnover, Luxbet turnover (from TBP.001.018.5686, without removing eliminations) has been subtracted from "Corporate FO" turnover and added to "Tabcorp FO" turnover. "Other Tote" and "Other FO" include RWWA turnover and "Other Bookmakers" turnover. Turnover generated by ACT TAB, which was acquired by Tabcorp in October 2014, is included under Tabcorp from FY 2012 onwards. Turnover generated by Tote Tasmania, which was acquired by Tatts in 2012, is included under Tatts from FY 2012 onwards.

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212. Figure 43 shows the likely distribution of corporate bookmakers' online and phone racing wagering turnover, alongside the online and phone (account) racing wagering turnover generated by each of the parties, in each state. On top of each column, I have calculated the ratio between the turnover of the corporate bookmakers, and the turnover of the party that does not have the local retail license in that state (i.e. the smaller party, or increment, for punters domiciled in that state). As noted above, the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of punters who choose to place even online and phone (account) bets with either of the parties, choose to place those bets with the party that is the local retail licensee in the state in which the punter is domiciled. Corporate bookmakers are likely to achieve racing wagering turnover that is **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED]

[REDACTED]

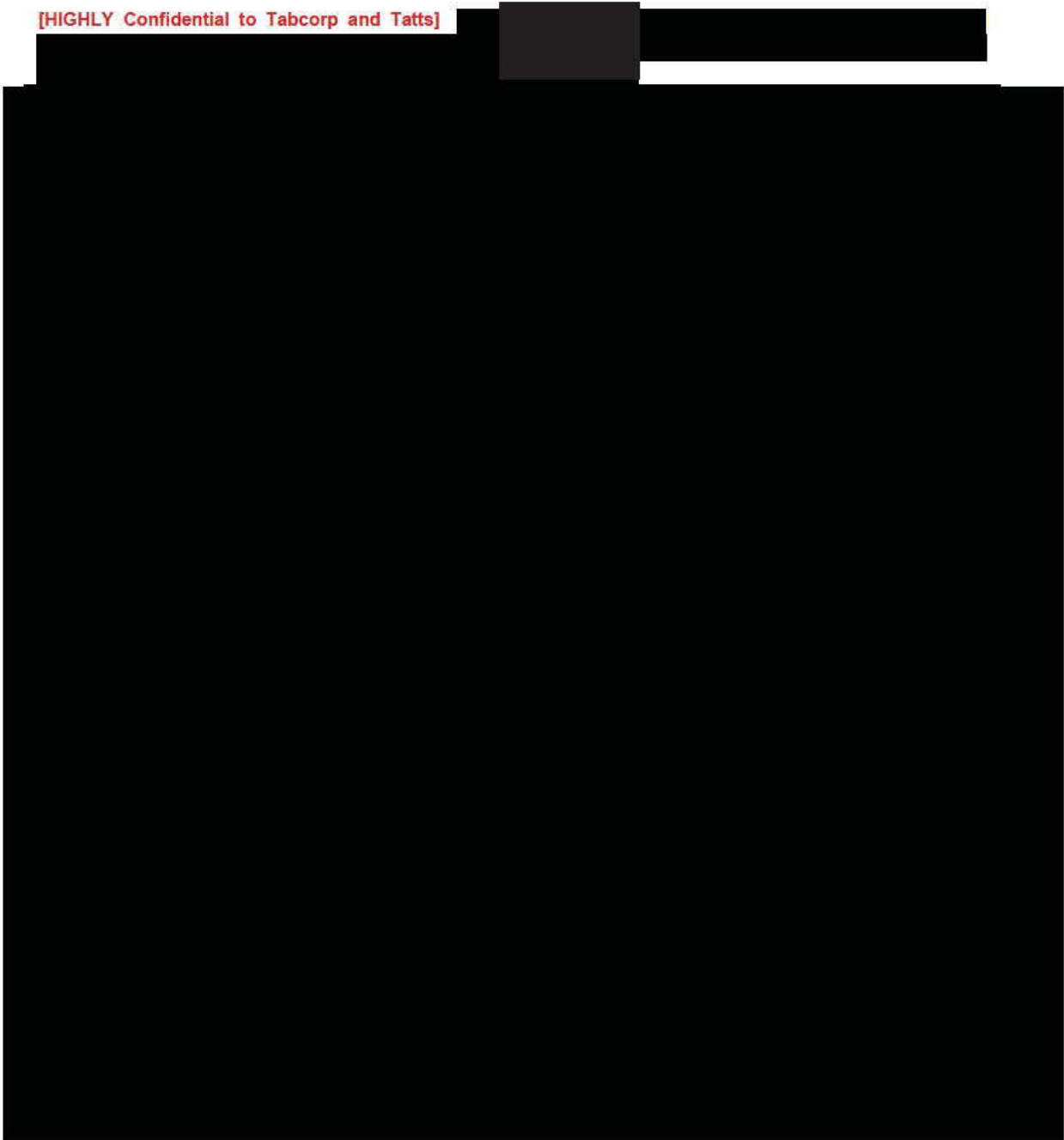
[REDACTED]

[REDACTED]⁸⁹

⁸⁹ A similar pattern is observed in respect of sports wagering.

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[HIGHLY Confidential to Tabcorp and Tatts]



213. This figure shows the relative turnovers of the options considered by punters domiciled in each state, when wagering on racing in the online and phone channels. The punters domiciled in each state choose [HIGHLY Confidential to Tabcorp and Tatts] ■



[REDACTED]

[REDACTED]

214. This [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters that choose to place bets with the party that is not their local retail licensee are more likely to be larger and better informed punters. Punters who choose to place fixed odds bets with the party that is not their local retail licensee [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates. Larger and more successful punters have the strongest incentives to be aware of, and utilise multiple alternative wagering operations over time. Large punters often bet into multiple tote wagering opportunities on the same event. These punters already display an awareness of options to place bets with out-of-state operators, and this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. Accordingly, the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters that choose to place bets with the party that is not their local retail licensee are likely to have the best ability to counteract any putative harm that might arise from the merger, through their awareness of the significant number of, and collectively far larger, wagering opportunities offered by the corporate bookmakers.
215. In regard to sports wagering, Figure 44 shows Tabcorp's, Tatts' and others' shares of turnover in the phone and online channel for sports wagering.

216. Corporate bookmakers account for a far larger proportion of online sports wagering, and their share has increased over time. There is a particularly sharp increase in corporate bookmakers' sports wagering turnover from FY 2012 to FY 2013, from around [HIGHLY Confidential to Tabcorp]

217. The parties each experience higher marginal costs than corporate bookmakers, because of higher taxes and higher funding obligations to the racing industry. Moreover, corporate bookmakers do not contribute to the same extent as Tabcorp and Tatts to the provision of racing information services to the public. Corporate bookmakers also enjoy lower

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overhead costs because they operate only online, and only provide a single bet type.⁹⁰ The comparison is most obvious in the corporate bookmakers' ability to offer tote derivative fixed odds products at better odds than those available through the tote. By way of example, corporate bookmakers will often offer "tote plus 5%", or "best of 3" different tote pools. The customer is therefore guaranteed a better return than that available from the Tabcorp or Tatts totes.⁹¹ Moreover, bookmakers are more freely able to advertise and promote products across all states and territories.⁹²

218. In a differentiated product market, a firm with higher marginal costs would be expected to set a higher price.⁹³ As a result, Tabcorp and Tatts would be expected to set higher prices (that is, lower payout rates or lower quality product offers) than the corporate bookmakers.

219. I have only seen limited data on corporate bookmakers' payout ratios. Figure 45 shows the payout ratios reported by William Hill (2013-2015) and Paddy Power (2010-2015).

⁹⁰ See Assumptions, paragraph 121 (Tab 1 of PS-2 [TBP.001.027.1974]).

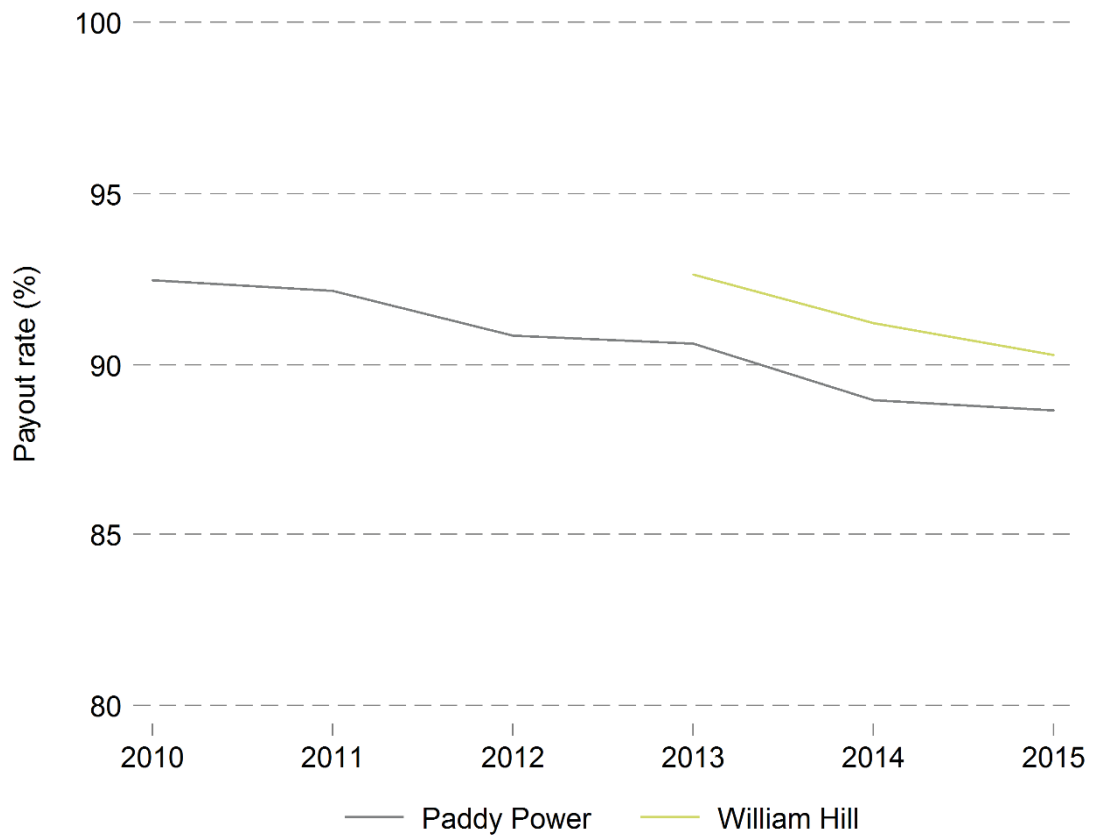
⁹¹ See Assumptions, paragraph 44 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁹² See Assumptions, paragraph 44 (Tab 1 of PS-2 [TBP.001.027.1974]).

⁹³ See, for example, Tirole, J., 'The Theory of Industrial Organisation', Massachusetts Institute of Technology (1998), section 7.1.1.1 (pages 279-281) (reference in Annex 2) which shows for a simple model in which firms compete on price and supply differentiated products, that the optimal price set by a firm is higher when its marginal cost is higher.

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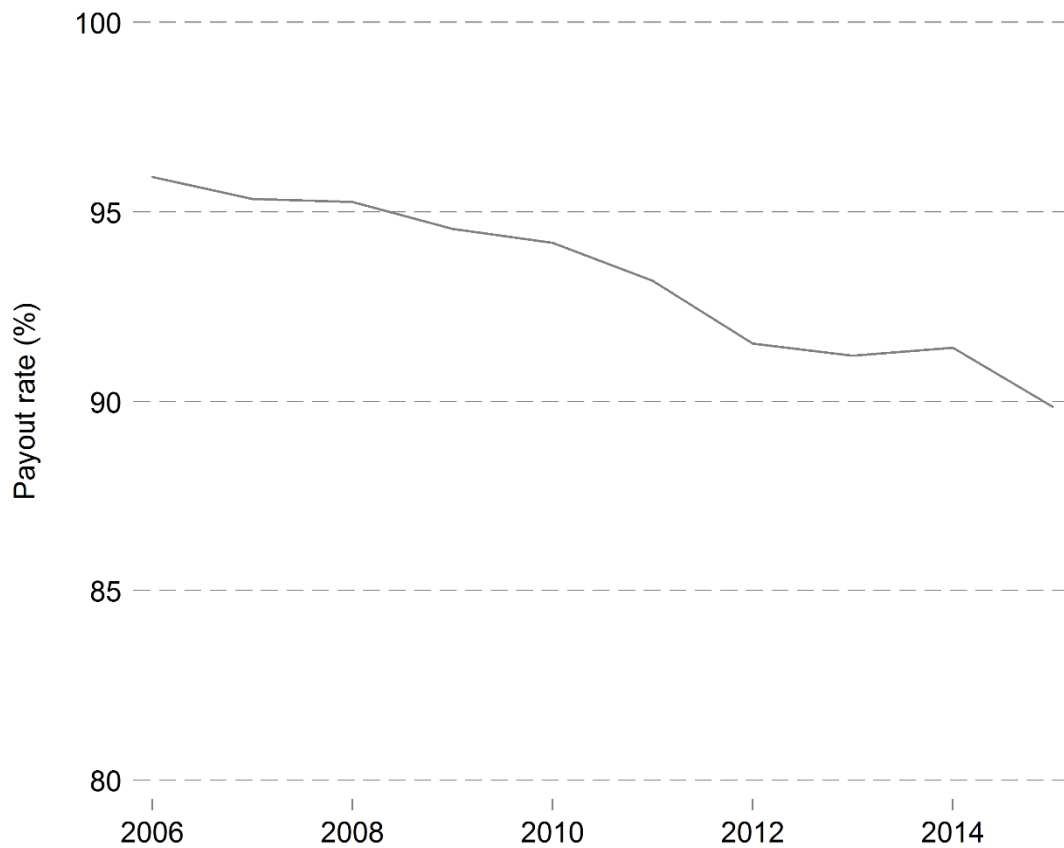
Figure 45: Australia payout ratios reported by Paddy Power and William Hill, 2010 to 2015.



Source: RBB Economics analysis of William Hill 2013 Annual Report (reference in Annex 2) (page 93), 2014 Annual Report (reference in Annex 2) (page 97) and 2015 Annual Report (reference in Annex 2) (page 108) and Paddy Power 2011 Annual Report (reference in Annex 2) (page 20), 2013 Annual Report (reference in Annex 2) (page 15) and 2015 Annual Report (reference in Annex 2) (page 16).

220. Figure 46 shows the payout ratios for corporate bookmakers, calculated from data reported in the Australian Gambling Statistics annual product tables.

Figure 46: Corporate bookmakers' average payout ratios, FY 2006 to FY 2015.



Source: RBB Economics analysis of Australian Gambling Statistics data, "On-Course Bookmaker Turnover" (reference in Annex 2) (page 34) and "On-Course Bookmaker Expenditure" (page 38). Notes: The payout ratios are calculated by the expressing the difference in bookmakers' annual turnover and expenditure, as a percentage of bookmakers' annual turnover. Only turnover and expenditure given for the Northern Territories is used as these include data for corporate bookmakers and registered on-course bookmakers, while the rest of the states only show figures for on-course bookmakers.

221. These payout ratios are generally [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] those offered by the parties' tote and fixed odds operations. Given this [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout ratios, and the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] online fixed odds presence of Tatts, in particular, I would expect the corporate bookmakers to continue to exert a significant competitive constraint on the merged entity, post-merger, and likely to continue to win share away from the merged entity, over the longer term, absent any efficiencies arising from this merger.

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222. Corporate bookmakers may obtain approval for new wagering products more easily and quickly than the parties, and as a result can offer a broader range of products.⁹⁴
223. While the corporate bookmakers are not a single economic entity, they each benefit from similar advantages, relative to the parties. Moreover, corporate bookmakers have collectively and individually grown their turnover rapidly within a short space of time, and by only operating in the online and phone channels, their marginal costs of expansion are relatively low, compared to the parties, who operate in both remote (online and phone), and physical (on-course and retail) channels. I would expect that the existing corporate bookmakers could each expand to accept higher turnovers relatively quickly. In this environment, it is relevant to consider the number of alternatives available to punters, and not merely the relative size of turnovers of each operator. Punters will retain a significant number of options in their choice of online wagering services.
224. In conclusion, in contrast to the parties' limited overlap with one another, the parties are likely to overlap much more significantly with large and well-resourced corporate bookmakers, who operate with the benefit of substantial advantages over the parties. While the parties each only achieve **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] online and phone racing wagering turnovers in states in which the other party is the local retail licensee, the corporate bookmakers are likely to achieve online racing wagering turnovers that are **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] [REDACTED] than the turnover achieved by the party that is not the local retail licensee, in each state (**[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] [REDACTED] [REDACTED]).
225. Moreover, the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters that choose to place bets with the party that is not their local retail licensee, are more

⁹⁴ See Assumptions, paragraph 62 (Tab 1 of PS-2 [TBP.001.027.1974]).

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likely to be larger and better informed punters, have the strongest incentives to be aware of, and to utilise multiple alternative wagering operations over time, and have the best ability to counteract any putative harm that might arise from the merger, through their awareness of the significant number of, and collectively far larger, wagering opportunities offered by the corporate bookmakers.

III.H. Efficiencies

226. The proposed merger is likely to give rise to a number of efficiencies that may have an impact on competition. In particular, some types of efficiencies would make the merged entity a more effective competitor against the corporate bookmakers. In this section, I consider the likely effects on competition arising from three types of efficiencies: cost synergies, business improvements, and the enhanced potential for offering deeper, co-mingled pools.

III.H.i. Cost synergies

227. The merged firm is expected to achieve substantial ongoing annual cost synergies, as well as significant capital expenditure savings. Some of the cost synergies are expected to reduce variable costs (by at least **[Confidential to Tabcorp]** ██████████, realised in full in the third year following completion of the proposed merger).⁹⁵ To the extent that the merged firm is able to lower its marginal cost of production, such cost savings are likely to lower the optimal price set by the firm, and so be passed on to consumers in the form of lower prices (or higher payout rates).⁹⁶

228. Significantly greater synergies are likely to result in a reduction in annual fixed costs (with total savings of fixed and variable costs of **[Confidential to Tabcorp]** ██████████, and **[Confidential to Tabcorp]** ██████████ after racing industry payments are

⁹⁵ See Assumptions, paragraphs 160-165 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

⁹⁶ See RBB Economics "Cost pass-through: theory, measurement, and potential policy implications" pages 29-30 (reference in Annex 2).

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deducted, realised in full in the third year following completion of the proposed merger).⁹⁷

If a merger results in fixed cost savings only, these are typically less likely to affect the firm's pricing decisions (at least in the short-term) and so be passed on to consumers. These fixed cost savings may still be considered a public benefit that could outweigh a potential public detriment.

229. However, in this case, non-price factors of competition, such as promotional expenditure, appear to be important. Potentially, pro-competitive strategic investments, such as promotional expenditure, are likely to be considered, budgeted and planned on an annual basis. The introduction of new products, or investment in improving the quality of wagering services are likely to be considered over the medium term. Accordingly, even annual fixed costs savings may have a positive effect on competition, through their effect on the merged entity's investment in these non-price factors of competition.
230. Moreover, and as discussed in the following section, annual cost savings are likely to affect contributions to the racing industry. Tabcorp will contribute at least **[Confidential to Tabcorp]** to applicable racing industry bodies in accordance with its current agreements to do so.⁹⁸

III.H.ii. Business improvements

231. A merger can lead to business improvements through implementing best practice across the merged entity. This can be thought of as taking place through the diffusion of know-how through the combined firm.⁹⁹ In particular, each entity may have superior knowledge of some business practices and areas, and post-merger the combined firm can implement whichever approach of each kind that is considered superior across the entire firm. In addition to any competitive benefits (in the form of, for example, more products

⁹⁷ See Assumptions, paragraphs 160-165 (**Tab 1 of PS-2 [TBP.001.027.1974]**). It is expected that there will be net one-off merger integration costs and capital expenditure of approximately \$80 million.

⁹⁸ See Assumptions, paragraphs 160-165 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

⁹⁹ See Rölller, Stennek & Verboven "Efficiency Gains from Mergers, in European Merger Control: Do We Need an Efficiency Defense?" in European Merger Control: Do We Need an Efficiency Defense?", Edward Elgar (reference in Annex 2)

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and higher quality products for punters), this may also lead to higher producer surplus in the form of increased profits.

232. The merged firm expects to achieve two main types of business improvements:

232.1.improving Tatts' average fixed odds yield; and

232.2.improving the quality and promotion of the merged entity's wagering services (including through investing in branding and retail outlets, increasing the coverage of new wagering products, and increasing the ability to accept more fixed odds bets through the operation of a larger and more diversified book).¹⁰⁰

233. The net effect of these types of business improvements will be a significant increase in wagering turnover and revenues. Broadly, the first type of business improvement will reduce wagering turnover, but increase revenues, while the second types will increase wagering turnover (and revenues), by an even greater amount.

234. **[Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] I understand that other fixed odds competitors also operate similar risk management systems.¹⁰¹

235. Improving the quality and promotion of the merged entity's wagering services and allowing it to take on more fixed odds bets will result in higher turnover (and correspondingly higher revenues) for the merged entity.¹⁰² These improvements will directly increase competition with corporate bookmakers.¹⁰³

¹⁰⁰ See Assumptions, paragraphs 166-181 (Tab 1 of PS-2 [TBP.001.027.1974]).

¹⁰¹ See Assumptions, paragraph 109 (Tab 1 of PS-2 [TBP.001.027.1974]).

¹⁰² See Assumptions, paragraphs 166-181 (Tab 1 of PS-2 [TBP.001.027.1974]).

¹⁰³ See Assumptions, paragraphs 166-181 (Tab 1 of PS-2 [TBP.001.027.1974]).

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236. Both types of business improvements will increase the profitability of the merged entity, and allow it to invest more in new products and better quality services, making it a more effective competitor, in particular against corporate bookmakers.

III.H.iii. Tote pools

237. To the extent that the parties currently offer tote betting products that do not compete, or compete only weakly with one another, but that cover the same racing and other betting opportunities, then these two wagering services are more likely to exhibit some degree of complementarity to one another, rather than substitutability.

238. The standard intuition that a horizontal merger of substitutes typically gives rise to some incentive to raise prices, is reversed in the case of complements.

239. Two products are substitutes if an increase in the price of one leads to an increase in demand for the other. A price increase for one brand of cereal might increase demand for another similar brand of cereal. With substitutes like these, the intuition behind unilateral effects analysis in mergers is clear – if a price rise by one brand was not profitable pre-merger, it may well be profitable post-merger, as some of the sales lost by the first brand would then be recaptured by the second. The merged entity is able to consider the recapture of these lost sales post-merger, although neither brand was able to do so independently pre-merger.

240. By contrast, two products would be complements if an increase in the price of the first leads to a decrease in demand for the second. A price increase for left shoes would not only decrease demand for those left shoes, but also for right shoes.¹⁰⁴ In this case a merger may lead to a fall in prices, reversing the logic in the case of substitutes.

¹⁰⁴ Similar dynamics are found in a range of situations, including printers and cartridges, and even hospitals in different regions that can combine to provide comprehensive coverage.

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241. The independent offerings of two complementary products gives rise to a negative externality between those products. An independent price rise by a left shoe producer has a negative effect on the demand for the products of the right shoe producer. In this case an analogous effect arises from the independent offering of two tote pools on the same races. By offering two independent tote pools, tote operators insulate a given punter betting into one tote pool from the liquidity that exists in the second independent tote pool. This makes both tote pools less attractive to punters.
242. A merger that could lead to further co-mingling between tote pools currently operated independently by each party is likely to result in more attractive pools for punters, that would make tote wagering more competitive against fixed odds wagering, in particular that offered by the corporate bookmakers.
243. The proposed merger brings about the possibility that Tabcorp and Tatts will be able to consolidate (co-mingle) their tote pools. The proposed merger would remove a commercial barrier to merging the totalisator pools, and may make it significantly easier to achieve a merger of pools in light of previous industry and regulatory concerns.¹⁰⁵
244. If regulatory and racing industry approvals were obtained for pooling across the Tabcorp and Tatts totalisator pools, and the pools were merged, this would create more attractive pools for punters, which would be likely to result in substitution from fixed odds betting to tote betting, and would accordingly generate significant turnover and revenue increases for the merged firm.¹⁰⁶

III.I. Conclusion

245. The merger is unlikely to lead to significant harm to competition, and is expected to give rise to several significant efficiencies, which will increase the turnover and revenues of

¹⁰⁵ See Assumptions, paragraphs 183-185 (Tab 1 of PS-2 [TBP.001.027.1974]).

¹⁰⁶ See Assumptions, paragraphs 183-185 (Tab 1 of PS-2 [TBP.001.027.1974]).

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the merged entity, and enhance its ability to compete effectively with the corporate bookmakers.

246. The two parties offer both tote and fixed-odds wagering opportunities to punters in Australia. Given the geographic restrictions on the parties' on-course and off-course retail operations, the primary scope for competition between the parties is in phone and online channels, where each of the parties' wagering products are offered to punters across Australia. Corporate bookmakers also offer punters fixed odds and tote derivative fixed odds wagering services in the online and phone channels. A number of odds comparison services exist that directly compare odds available across various fixed odds and tote services, for any given racing event.
247. As an empirical matter, even within the online channel, the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters that choose to place tote and fixed odds bets with one of the parties, place these bets with their "home operator", i.e. the party licensed to provide wagering services in the retail channel in the state in which those punters are domiciled.
248. A **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters choose to place online and phone racing bets in the tote pools of the party that is not their local retail licensee. This proportion of wagering activity does not appear to respond to the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] pool sizes between the Tabcorp and Tatts pools. The **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] tote payout rates that are observed between the three tote pools do not appear to affect relative punter demand for different tote pools. Differences in tote pool sizes do appear to affect relative punter demand for different tote pools, although primarily between the two Tabcorp tote pools, the Victoria (SuperTAB), and New South Wales pools, rather than between the Tabcorp and Tatts pools. Moreover, I am not aware of obvious options available to Tatts that could significantly affect the relative pool sizes of the Tatts pool and the Tabcorp pools.

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249. The [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters that choose to place online and phone racing bets in the tote pools of the party that is not their local retail licensee may significantly comprise large punters. Large punters are likely to be most aware of the benefits of betting into deeper pools, and betting into multiple pools for the same betting opportunity, as large bets will have the greatest negative effects on tote payout rates for the punter concerned, especially within smaller pools. In the case of large punters betting across pools in order to achieve the benefits of co-mingling, these different tote pools would not be competing with one another, but are rather offering the same punter two independent pools in which to place his bets, to allow him to spread the effect of his bets across the different pools.
250. Punters that choose to place bets in the pools of the party that is not their local retail licensee are more likely to be better informed regarding their online options for wagering on racing. In the first instance, this [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters that do place online and phone tote bets in the pools of the party that is not their local retail licensee already display an awareness of options to place bets with out-of-state operators. In particular for large punters, that have the incentives to place bets into multiple pools, and that often bet into all Australian tote pools (and some international pools), this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.
251. Similarly, a [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters choose to place online and phone fixed odds bets with the party that is not their local retail licensee. This [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters may significantly comprise larger and more successful punters. Larger and more successful punters will have the greatest incentives to place bets with multiple fixed odds operations over time. There are indications that punters who choose to place fixed odds bets with the party that is not their local retail licensee [HIGHLY Confidential to Tabcorp

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and Tatts] [REDACTED] payout rates, and accordingly are likely to be more successful punters, who would have the strongest incentives to be aware of, and utilise, alternative fixed odds operations over time. In particular for larger and more successful punters, this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.

252. The same group of punters that might potentially be affected by the merger (because these punters place bets “out of state”, they might consider choosing between the parties’ online fixed odds offerings), are likely to be better informed regarding their online options for wagering on racing, and are therefore less likely to be adversely affected by any putative adverse effects of the merger. There is limited scope for competition between the parties’ wagering services, and the parties are relatively distant competitors with one another, even in the online and phone channels.
253. The merged entity will continue to face numerous, large and well-resourced corporate bookmakers, which collectively account for significantly larger turnover than the parties, and have grown faster than the parties over the past few years. Corporate bookmakers operate solely online and via phone, and accordingly have limited incremental costs of expansion.
254. The parties’ each experience higher marginal costs than corporate bookmakers, because of higher taxes and higher funding obligations to the racing industry, and additional contributions to the provision of racing information services to the public. Corporate bookmakers are more freely able to advertise and promote products across all states and territories, and may obtain approval for new wagering products more easily and quickly than the parties. Corporate bookmakers can offer a broader range of products, and can and generally do offer more attractive payout ratios to punters.

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255. Finally, the merging parties anticipate that the merger will give rise to a number of efficiencies that would make the merged entity a more effective competitor against the corporate bookmakers, lowering marginal costs, and also annual fixed costs.
256. Accordingly, I do not expect the merger to give rise to significant harm to competition, but rather that it is more likely to enhance competition amongst the merged entity and the corporate bookmakers.

IV. Funding for the racing industry

257. The racing industry relies on funding from the wagering industry (and in particular from the state-licensed retail wagering operators) and the wagering industry relies on the racing industry to provide races that punters can bet on.¹⁰⁷
258. In its submission to the Productivity Commission Inquiry into the gambling industry in 2010, the Australia Racing Board estimated that 65% to 70% of thoroughbred racing funding resulted from wagering revenues.¹⁰⁸
259. Racing represents the vast majority of wagering on the parties' platforms. In FY 2015, racing-related bets represented [HIGHLY Confidential to Tabcorp] [REDACTED] of the total wagering turnover of Tabcorp, and [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of the total wagering turnover of Tatts.¹⁰⁹ By contrast, racing bets represent only [Confidential to Tabcorp] [REDACTED] of the total betting turnover of all bookmakers, and this proportion has [Confidential to Tabcorp] [REDACTED]¹¹⁰. As a result, the parties have an even stronger incentive than other wagering operators, to ensure and contribute towards the maintenance of high quality racing.
260. Figure 47 shows the turnover generated by Tabcorp from offering wagering on races, and the prize money offered for those races, according to the state in which the racing took place. Each point represents a season from 2006-2007 to 2014-2015.

¹⁰⁷ See Assumptions, paragraphs 84-86 (Tab 1 of PS-2 [TBP.001.027.1974]).

¹⁰⁸ See the Australian Racing Board submission to the Gambling Productivity Commission Inquiry (reference in Annex 2), page 3, which states: "Australian Racing and the Australian wagering market are financially interdependent, interrelated, and structurally linked. Today wagering inflows account for 65 to 70 percent of total Australian thoroughbred racing funding." Similarly, page 25 states: "The thoroughbred racing industry receives funding from different sources including sponsors, media companies, racetrack patrons and racehorse owners. However, while sponsorships, catering, track admissions and other sources of revenue alleviate some of the costs of putting on a racing event, their total contribution is minor (collectively accounting for less than 30 percent of racing funding), when compared to the amount returned to racing from wagering."

¹⁰⁹ Excel Spreadsheets titled "TBP.001.018.5686" (Tab 2 of PS-2 [TBP.001.018.5686]) and TAT.001.015.0804 (Tab 3 of PS-2 [TAT.001.015.0804]). "Total turnover" refers to the total amount wagered on the parties' betting offers by punters without any deductions. Proportions are even higher when considering revenues for the parties.

¹¹⁰ Excel Spreadsheet titled "TBP.001.018.5686" (Tab 2 of PS-2 [TBP.001.018.5686]).

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261. The states and territories in which the highest prize money was offered (in significant part funded by contributions from wagering operators), were also the states and territories which gave rise to the highest wagering turnovers.

262. The co-dependency of the parties and the racing industry is also evident in the nature of commercial agreements whereby: racing administrators commit to offer a certain number of races in the relevant state; the parties commit to conduct totalisator wagering covering

a certain number of race meetings; and the parties agree to pay fees to the racing industry to ensure appropriate funding.¹¹¹

IV.A. Framework for the analysis

263. Assessing the likely impact of the proposed merger on funding for the racing industry requires the consideration of two main dynamics.

263.1. The effect of the merger on wagering turnover and revenues generated by the parties, for a given relationship between wagering revenues and funding for racing. Racing funding contributions made by the parties are typically linked to their wagering turnover or revenues, with different rules applying in each state.¹¹² Higher wagering revenues for the parties thus lead to higher contributions towards funding for the racing industry.

263.2. The effect of the merger on the bargaining dynamic that gives rise to the relationship between wagering revenues and the contributions to the racing industry.

IV.B. Funding arrangements

264. The funding arrangements agreed between the racing industry in each state and the retail wagering licensees may involve bargaining amongst at least the relevant racing stakeholders, state governments, and the wagering licensees. The outcome of such negotiations can depend on the harm caused to each party by a failure to reach an agreement, or its outside options. A party may agree to an outcome only if it is as good as its best outside option, absent agreement. To the extent that the merger affects the outside options available to the racing industry in each state, then this could affect the

¹¹¹ See Australian Racing Board submission to the Gambling Productivity Commission Inquiry (reference in Annex 2)

¹¹² See Assumptions, paragraphs 84-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

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funding arrangements that relate wagering turnover of the racing industry and the tote operators.

265. It is unclear, as a matter of theory, whether or not further consolidation amongst wagering licensees is likely to strengthen or weaken the negotiating position of the wagering licensees.

265.1. It may appear that the outside options of the states and territories (and their respective racing associations) would be reduced by the consolidation of two of the current wagering licensees. Such an analysis would depend on the capability and incentives of other potential wagering licensees to compete for any new licences that might come up in future.

265.2. On the other hand, it may also appear that the outside option of the wagering licensees is worsened by the merger, as any failure to agree sufficient funding for the racing association in one state or territory would not only adversely affect the relevant wagering licensee in that state, but would likely also adversely affect the merging party's other wagering operations in other states and territories.

266. As a factual matter, the relationships between wagering revenues and funding for racing are the result of negotiations involving multiple parties, over a long period of time, and are expected to continue for the foreseeable future.¹¹³

267. I have considered the terms agreed in previous iterations of wagering licenses, in particular comparing the terms agreed between states and territories and the original wagering licensees, and then the terms more recently agreed by the same states and territories, and the current wagering licensees, which have followed a period of significant consolidation amongst wagering licensees. Three state licences have been re-awarded, or extended since their original agreement – those in Victoria, New South Wales, and

¹¹³ See, in particular, Assumptions, paragraph 154 (Tab 1 of PS-2 [TBP.001.027.1974]).

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Queensland. In between these renegotiations or extensions, there has been a significant consolidation amongst wagering licensees.

268. In regard to Tabcorp:

268.1. Tabcorp was formed in 1994 when the Victorian State Government privatised the Victorian TAB through an initial public offering listed on the ASX;

268.2. Tabcorp acquired TAB Limited, the New South Wales TAB business, in 2004; and

268.3. Tabcorp acquired ACTTAB, the previously owned government owned ACT TAB business, in October 2014.

269. In regard to Tatts:

269.1. TABQ was formed in 1999 when the Queensland State Government privatised the Queensland TAB through an initial public offering listed on the ASX;

269.2. TABQ acquired TAB NT when it was privatised in 2000;

269.3. TABQ acquired TAB SA when it was privatised in 2002 and changed its name to UNiTAB;

269.4. Tattersalls Ltd and UNiTAB merged in 2006; and

269.5. Tatts (formerly Tattersalls Ltd) acquired Tote Tasmania in 2012.

270. There is no evidence that these renegotiations, despite significant consolidation amongst wagering operators, resulted in any worsening of the terms for the funding of racing.

270.1. In 1994, the Victorian State Government granted Tabcorp an 18 year exclusive retail wagering licence in Victoria. In 2012, following a competitive bidding process, Tabcorp was awarded the Victorian wagering licence for a further 12 years, with an option on the part of the Victoria Government to extend for a further

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two years. It was a requirement of the bidding process that the applicants had to agree to arrangements with the Victorian racing industry (including in relation to funding) that were no less favourable than the existing arrangements that were in place with Tabcorp at that time. Furthermore, I understand that there are some terms in the 2012 agreements that are more favourable to the racing industry than those in the original 1994 agreements, such as that Tabcorp is now required to contribute 50% of Victorian wagering revenues, whereas the 1994 agreements required a contribution of 25% of net profits.¹¹⁴

270.2. In 1998 when the New South Wales State Government granted TAB Limited a 99 year wagering licence with retail exclusivity for 15 years. In 2013, the New South Wales State Government negotiated an agreement with Tabcorp to extend the exclusivity period for a further 20 years without a competitive process. I understand that while the core terms in the 2013 agreement remain unchanged, relative to the 1998 agreement, there are some additional terms which require Tabcorp to make contributions in respect of new products and arrangements, such as Trackside, PGI, as well as a sponsorship fee to NSW Racing.¹¹⁵

270.3. In 1999 the Queensland State Government granted TABQ a wagering licence and retail exclusivity for 15 years. In 2014, Tatts negotiated an agreement with the Queensland State Government to extend Tatts' Queensland wagering licence by 61 years to 2098, and to extend the retail exclusivity period by 30 years to 2044. I understand that while the core terms in the 2014 agreement remain unchanged, relative to the 1999 agreement, there are some additional terms which require

¹¹⁴ See Productivity Commission, "Gambling", No. 50, 26 February 2010 (reference in Annex 2), Table 16.2; and Assumptions, paragraphs 10 and 84-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

¹¹⁵ See Productivity Commission, "Gambling", No. 50, 26 February 2010 (reference in Annex 2), Table 16.2; and Assumptions, paragraphs 10 and 84-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

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Tatts to make contributions in respect of new products and arrangements, sports wagering revenues.¹¹⁶

271. Figure 48 summarises Tabcorp's contributions to the racing industry in absolute terms, and as a proportion of its wagering revenues derived from racing.

[HIGHLY Confidential to Tabcorp] [REDACTED]



272. Tabcorp's contributions to the racing industry have increased over time, and these contributions, **[HIGHLY Confidential to Tabcorp]** [REDACTED]

¹¹⁶ See Productivity Commission, "Gambling", No. 50, 26 February 2010 (reference in Annex 2), Table 16.2; and Assumptions, paragraphs 17 and 84-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

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[REDACTED], a period during which there has been significant consolidation amongst wagering licensees.

273. Prize money, or stakes, are one of the primary uses of funding in the racing industry. Prize money attracts and remunerates owners, trainers and jockeys of good quality race horses. Tabcorp's turnover on different racing events is an indication of the quality of those events, in terms of punters' demand for products that relate to these events.

274. Figure 49 shows the changes over time in the ratio of Tabcorp's wagering turnover, on races run in each state, as a multiple of the prize money offered in that state.

[HIGHLY Confidential to Tabcorp] [REDACTED]



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[REDACTED]

275. The ratio of wagering turnover to prize money is one indication of the value obtained by wagering operators (turnover), relative to the value obtained by racing associations (prize money).

275.1. This ratio is [HIGHLY Confidential to Tabcorp] [REDACTED] in the states where Tabcorp is licensed (Victoria and New South Wales), which are also the largest states, in terms of wagering revenues, and racing activity.¹¹⁷ This indicates that racing associations in these states obtained [HIGHLY Confidential to Tabcorp] [REDACTED], than those in states where the local wagering operator is Tatts. As Tatts is a smaller wagering operator, this indicates that Tabcorp's larger size, and the history of consolidation, did not result in any worse terms for racing associations in states where Tabcorp is the retail wagering licensee.

275.2. If anything, this calculation, which is based on Tabcorp's wagering turnover, is likely to be biased to show higher, not lower, turnover (and therefore a higher ratio of turnover to racing prize money) in states where Tabcorp is licensed, as there appears to be a [HIGHLY Confidential to Tabcorp] [REDACTED] [REDACTED] racing. Figure 50 shows the tote racing wagering turnover generated by each of the New South Wales and Victoria totes, broken down according to the state in which the racing took place. [HIGHLY Confidential to Tabcorp] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹¹⁷ Racing in Tasmania accounts for a very small share of wagering turnover, and of prize money.

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[HIGHLY Confidential to Tabcorp]



275.3. This ratio is [HIGHLY Confidential to Tabcorp] over time, in all states and territories, in particular since 2011. This indicates that racing associations obtained [HIGHLY Confidential to Tabcorp]. This may be because the racing associations have been able to find additional sources of funding (for example, race field fees) or because the wagering operators are able to extract less of the value of these races (for example, due to increasing competition from corporate bookmakers).¹¹⁸ This indicates that the recent history of consolidation amongst wagering licensees did not result in any worse terms for racing associations.

¹¹⁸ See Assumptions, paragraphs 92-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

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276. Based on the information available to me, it appears unlikely that the merger will have any significant adverse effect on the relationship between wagering turnover and funding for racing. Accordingly, the effect of the merger on wagering turnover and revenues generated by the parties is likely to be the most important consideration.

IV.C. Wagering turnover

277. As noted above, the proposed merger is likely to give rise to a number of efficiencies that are likely to increase the turnover and revenues generated by the merged entity, relative to the parties under the relevant counterfactual.

277.1. The merged firm will achieve substantial ongoing cost synergies. These cost savings will directly increase the merged entity's contributions to racing. The merged entity will contribute **[Confidential to Tabcorp]** ██████████ as a result of these cost and capex synergies to applicable racing industry bodies in accordance with its current agreements to do so.¹¹⁹ Moreover, these cost savings will allow the merged entity to consider further investments in improving the quality of its wagering services, which may result in further uplift to its turnover and revenues, and hence further incremental contributions to racing.

277.2. The merged firm will achieve substantial revenue synergies through business improvements. These initiatives will directly and significantly increase the merged entity's wagering turnover and revenues, and hence its contribution to racing, **[Confidential to Tabcorp]** ██████████.¹²⁰ Moreover, these business improvements will also increase the profitability of the merged entity, and allow it to invest more in new products and better quality services, making it a more effective competitor, in particular against corporate bookmakers, which may result in a further uplift to funding for racing.

¹¹⁹ See Assumptions, paragraph 164 (Tab 1 of PS-2 [TBP.001.027.1974]).

¹²⁰ See Assumptions, paragraph 182 (Tab 1 of PS-2 [TBP.001.027.1974]).

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277.3.A merger could lead to further co-mingling between tote pools currently operated independently by each party, and as such may result in more attractive pools for punters, that would make tote wagering more competitive against fixed odds wagering, in particular that offered by the corporate bookmakers. Such an improvement would be likely to further increase the turnover and revenues of the merged entity, and hence the contribution to racing.

IV.C.i. Contributions of corporate bookmakers

278. A significant part of the anticipated increase in wagering turnover of the merged entity is likely to be at the expense of lower turnover and revenues for the corporate bookmakers. However, corporate bookmakers make a lower contribution to racing, per unit of turnover.¹²¹ Accordingly, even if a significant part of any increase in the parties' wagering turnover and revenues is at the expense of those of the corporate bookmakers, this would result in an increase in funding for the racing industry.

279. Accordingly, the merger is unlikely to harm funding for racing, but rather is likely to enhance it. The total amount of ongoing cost and revenue synergies that would be paid to the racing industry in accordance with existing agreements as a result of the merger would be at least **[Confidential to Tabcorp]** [REDACTED].¹²²

¹²¹ See Assumptions, paragraph 43 (Tab 1 of PS-2 [TBP.001.027.1974]).

¹²² See Assumptions, paragraph 186 (Tab 1 of PS-2 [TBP.001.027.1974]).

V. Total economic welfare

V.A. Framework for the assessment

280. The immediate economic impact of the proposed merger depends on the two effects described previously – the effect on competition, and the effect on funding for the racing industry – as well as the potential for efficiencies that are not relevant to the competition or funding analyses.
281. However, the ultimate effect on total economic welfare, will also depend on the implications of each of these economic flows.

V.B. Competition in wagering services

282. As discussed above, the merger is unlikely to lead to any significant harm to competition, but rather is likely to give rise to a number of efficiencies that would make the merged entity a more effective competitor against the corporate bookmakers. In particular, the proposed merger will reduce the costs, and increase the turnover and revenues of the merged entity, allowing it to invest in improving the quality of its retail and online wagering offering, introduce a wider variety of new bet types, and potentially offer deeper and more stable co-mingled pools. A significant part of the anticipated increase in the merged entity's turnover and revenues is likely to be at the expense of the corporate bookmakers.
283. The ultimate impact on total economic welfare is likely to be positive, given that the anticipated efficiencies are expected to be net positive in terms of industry turnover (output), and profitability.
284. It is difficult to consider fully the economic implications of second and third round effects. By way of illustration, I do not have sufficient information to estimate or calibrate the net effect of cannibalisation of \$1 of turnover from a corporate bookmaker to the parties. The

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net effect of this cannibalisation would likely depend on the different payout ratios applied, and the differential scope for multiplier effects: corporate bookmakers are likely to apply higher payout ratios, therefore leaving more money in punters' hands, which might be used to enhance economic welfare; conversely, the merged entity is likely to still be less cost efficient than corporate bookmakers, so the additional turnover is more likely to give rise to multiplier effects within the parties' cost bases. I do not have information available to me that would indicate a sufficiently certain and specific pattern of second and third round effects that would overturn my conclusion that the ultimate impact on total economic welfare is likely to be positive.

V.C. Funding for racing

285. The merger is unlikely to harm funding for racing, but rather is likely to enhance it. The merger is likely to result in a significant increase of the turnover and revenue of the merged entity, which would lead to additional funding for racing. The ultimate impact on economic welfare will depend on the multipliers that would apply to this additional funding, within the racing and associated industries.
286. The total amount of ongoing cost and revenue synergies that would be paid to the racing industry in accordance with existing agreements as a result of the merger would be at least **[Confidential to Tabcorp]** [REDACTED].¹²³
287. Additional funding is likely to be applied to investments in the racing industry and stakes and other prize money, which is used to attract owners, trainers and jockeys.
288. The ultimate impact on total economic welfare is likely to be positive, given that the anticipated increase in funding for racing will be net positive.

¹²³ See Assumptions, paragraph 186 (Tab 1 of PS-2 [TBP.001.027.1974]).

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289. It is again difficult to consider fully the economic implications of second and third round effects. In this context, I do not have sufficient information on how the racing associations operate, and how they might be required to, or might choose to, spend these additional funds. I do not have information available to me that would indicate sufficiently certain and specific pattern of second and third round effects that would overturn my conclusion that the additional funding for racing that is likely to be caused by the merger, is likely to enhance total economic welfare.

V.D. Additional pecuniary efficiencies for the merged firm

290. As noted above, the proposed merger is likely to give rise to a number of efficiencies that are likely to increase the turnover and revenues generated by the merged entity, relative to the parties under the relevant counterfactual. Some of these efficiencies are likely to result in benefits to consumers through enhancing the effectiveness of the merged entity in competing with the corporate bookmakers. However, some of these synergies are less likely to be directly passed on to benefit consumers, and will more likely be a direct benefit for the merged entity.

290.1. The merged firm will achieve substantial ongoing cost synergies. The majority of the cost savings are assumed to affect fixed costs and so would be less likely to be passed through to prices (at least in the short-term). While a significant portion of these annual fixed costs savings are likely to affect the ability and incentive of the merged entity to invest in new products and other quality improvements, to the extent that any of these savings are not passed on, they would still accrue to the merged entity (and its shareholders) as additional profits. The proposed merger is also assumed to lead to net one-off merger integration costs and capital expenditure of approximately [Confidential to Tabcorp] ██████████¹²⁴ While

¹²⁴ See Assumptions, paragraph 165 (Tab 1 of PS-2 [TBP.001.027.1974]).

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these merger integration costs will reduce producer surplus from the merger, they are likely to result in additional economic activity for other economic entities.

290.2. The merged firm will achieve substantial revenue synergies through business improvements. These initiatives will directly and significantly increase the merged entity's wagering turnover and revenues. Some of these business improvements, in particular those related to improving Tatts' fixed odds yield, are anticipated to result in a decrease in turnover, but an increase in revenues. This increase in revenues (and hence profitability) may allow the merged entity to invest more in new products and better quality services, making it a more effective competitor, in particular against corporate bookmakers, which may result in further uplift to funding for racing. However, to the extent that this increase in revenues is not reinvested in this way, this would result in additional profitability for the merged entity and its shareholders, as well as increases in the funding for the racing industry, as discussed above.

290.3. The additional wagering revenues (and resulting profitability) will also result in higher fees and taxes for a wider set of stakeholders, outside of racing. In particular, other sporting bodies will receive an additional **[Confidential to Tabcorp]** [REDACTED], retail wagering venues, such as pubs, clubs and agencies, will receive an additional **[Confidential to Tabcorp]** [REDACTED], and state and federal governments will receive an additional **[Confidential to Tabcorp]** [REDACTED].

[REDACTED].¹²⁵

¹²⁵ See Assumptions, paragraph 182 (Tab 1 of PS-2 [TBP.001.027.1974]).

Annex 1 – The effect of changes in tote payout rate on punter demand

291. In this annex, I present my empirical assessment of the effects of changes in tote payout rates on punter demand. Specifically, I consider the available data on turnover for specific bet types in response to a number of abrupt changes in payout rates for those same bet types.

292. Identifying the effects of changes in payout rates on punter demand may be complicated by the various confounding factors and trends that appear to have affected tote racing wagering turnover (such as the relative growth of fixed odds wagering, and the growth of sports wagering, as discussed above). The relationship between payout rates and punter demand may also be affected by simultaneity: while I have tried to identify the effect of changes in payout rates on punter demand, there may simultaneously be effects in the opposite direction, i.e. payout rates might be set in anticipation of expected changes in punter demand. In this annex I have tried to identify the effects of changes in payout rates on punter demand by considering a number of abrupt changes in payout rates for specific bet types, and considering changes in wagering turnover that coincided with those changes in payout rates, thereby assuming that isolated, and in some cases temporary, changes in payout rates are exogenous to punter demand.

293. Over the period 2008 to 2016, Tabcorp [Confidential to Tabcorp] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Since there were only a limited number of such changes that were introduced abruptly and resulted in a significant short term change in payout rates, I have considered these changes as exogenous, and have examined whether punter demand was significantly different in the period during which the tote takeout rates were temporarily altered, compared with demand in the surrounding

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periods. In particular, I have analysed whether or not four changes in payout rates have had a significant impact on punter demand (turnover).

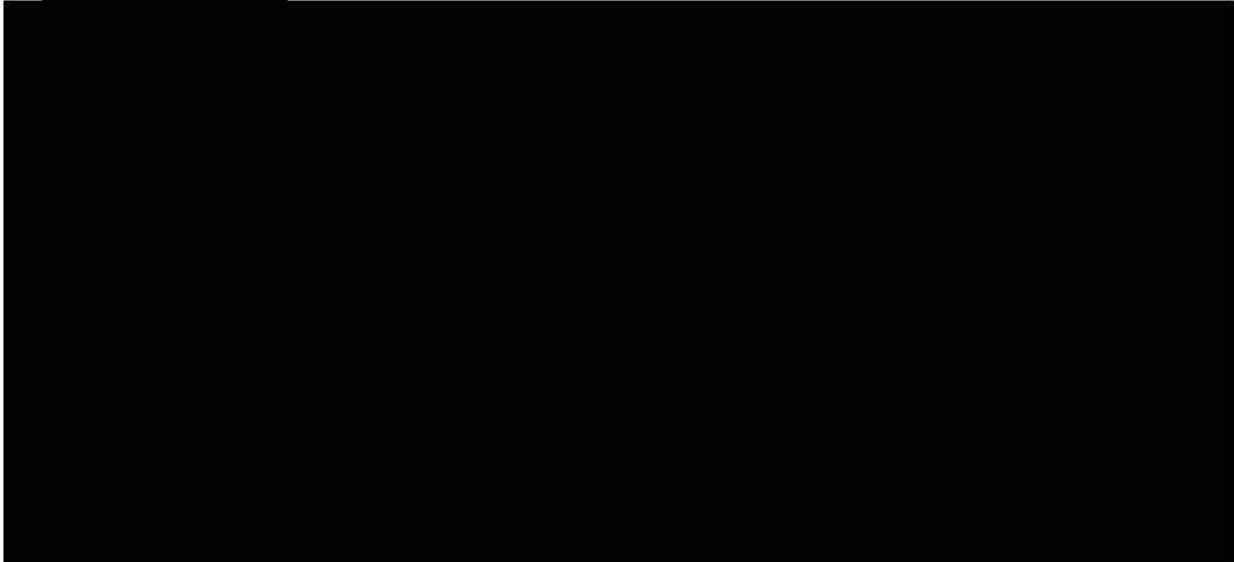
293.1. [Confidential to Tabcorp] [REDACTED]
[REDACTED]
[REDACTED] However, there was [HIGHLY Confidential to Tabcorp] [REDACTED] in punter demand (turnover) in either of these tote pools, in response to the [Confidential to Tabcorp] [REDACTED] payout rates that were available during this period.

293.2. [Confidential to Tabcorp] [REDACTED]
[REDACTED]
[REDACTED] However, again, there was [HIGHLY Confidential to Tabcorp] [REDACTED] in punter demand (turnover), in either state, in response to the [Confidential to Tabcorp] [REDACTED].

294. Figure 51 and Figure 52 show average weekly payout rates and weekly turnover for win bets on races held in Australia on each of the Victoria and New South Wales tote pools respectively over the period January 2008 to June 2016. [Confidential to Tabcorp]

[REDACTED]
[REDACTED] The payout rates [HIGHLY Confidential to Tabcorp] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[HIGHLY Confidential to Tabcorp] [REDACTED]



295. I would like to compare turnover on win bets during the periods in which [Confidential to Tabcorp] [REDACTED] payout rates were available, to the turnovers on win bets during comparable periods in which payout rates were [Confidential to Tabcorp] [REDACTED]. In order to perform such a comparison, it is necessary to control for other factors, such as seasonality, or trends over time, which may affect turnover. The turnovers shown in Figure 51 and Figure 52 appear to exhibit significant seasonality, with fluctuations in similar months each year, and moreover there appears to be a significant [HIGHLY Confidential to Tabcorp] [REDACTED] trend in the tote turnovers received from one year to the next.

296. The following simple regression model can be applied to control for seasonality and trends over time. Such a regression would test whether or not tote turnover was significantly higher in the months in which the payout rate was higher, relative to similar months in adjacent years, while attempting to control for seasonality and trends in turnover over time.

$$turnover_t = f(payout_t, month_t, year_t),$$

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296.1. $turnover_t$ refers to Tabcorp's weekly tote racing turnover on Win bets on races held in Australia in week t .

296.2. $payout_t$ is a dummy variable which equals one if Tabcorp's tote racing takeout rates were [Confidential to Tabcorp] (implying that payout rates [Confidential to Tabcorp]) in week t for Win bets, and zero otherwise. The variable equals one for a total of [Confidential to Tabcorp].

296.3. $month_t$ is the calendar month at the start of week t , and is intended to capture seasonal effects following the racing calendar.

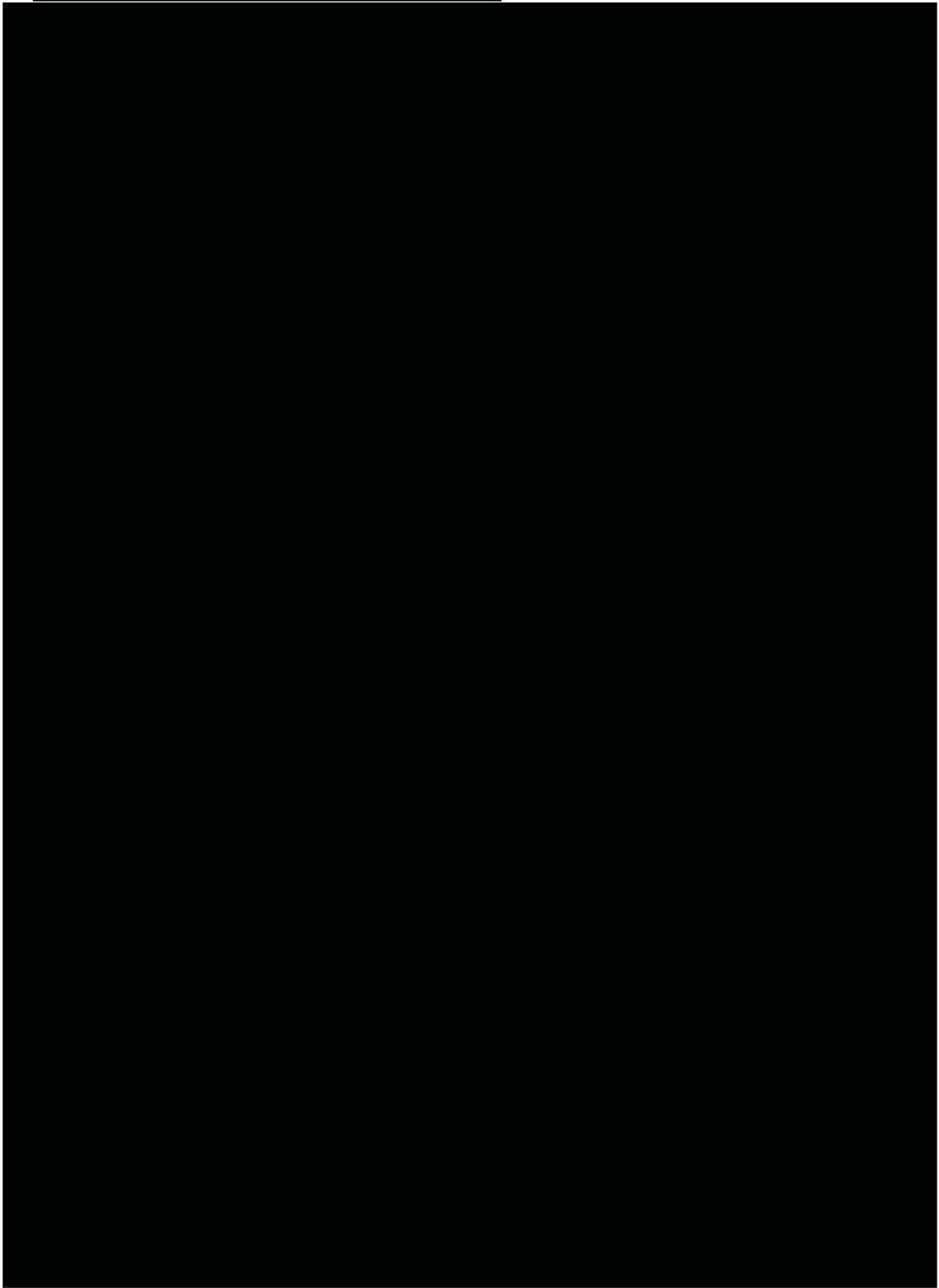
296.4. $year_t$ refers to the calendar year of week t . This variable captures long term trends in tote racing wagering in each state. Since separate regressions are run for each state, these trends might be due to differences in pool sizes that may have developed over time, as well as local changes in punter demand.

297. The model is assumed to be linear, and Ordinary Least Squares has been used to estimate the model parameters. The variance-covariance matrix of the parameter estimates are estimated using a heteroscedasticity and autocorrelation consistent covariance matrix estimator, which accounts for non-constant variance in the error term over time and correlation between the error terms across different time periods.

298. Since turnover, in particular in regard to the New South Wales tote, before 2008 displays substantial noise, the time period of the regression is restricted to January 2008 to June 2016. The estimates from the regressions for each state are provided in Table 1 below.

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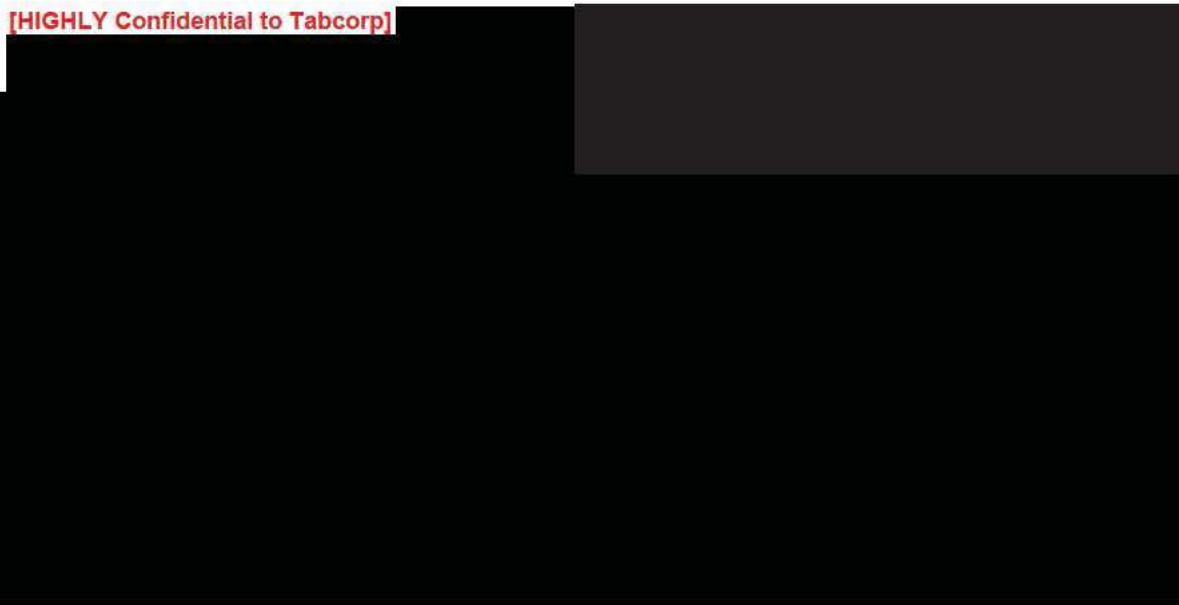
[HIGHLY Confidential to Tabcorp]





299. The parameter estimates on the payout variable are **[HIGHLY Confidential to Tabcorp]** [REDACTED], at any conventional level of confidence. These results indicate that once seasonality and time trends are controlled for, **[Confidential to Tabcorp]** [REDACTED] **[HIGHLY Confidential to Tabcorp]** [REDACTED] on turnover.

300. In order to test the robustness of this result, and to increase the degrees of freedom in this regression, I have also performed an alternative specification in which the calendar month explanatory variable has been converted to a dummy denoting the quarter of the year. This is still intended to capture the seasonality in the racing calendar, in which the final quarter, in particular, is typically the period where wagering turnover on racing is substantially higher than at other times of the year, but this only requires four dummy variables, rather than 12. Table 2 below shows the results from regressions of weekly turnover on Win bets on races held in Australia, with this alternative specification.



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301. Again, the parameter estimates on the payout variable are **[HIGHLY Confidential to Tabcorp]** [REDACTED], at any conventional level of confidence. These results again indicate that once seasonality and time trends are controlled for, **[Confidential to Tabcorp]** [REDACTED] **[HIGHLY Confidential to Tabcorp]** [REDACTED] on turnover.

302. In order to further increase the degrees of freedom, I have also performed a specification in which there is no attempt to control for seasonality (no month, nor quarter dummy variables are included), and instead of using individual annual dummies to account for longer term trends in tote wagering, a single linear trend is used (year). Table 3 below

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shows the results from the regression of weekly turnover on Win bets on races held in Australia using this third specification.

[HIGHLY Confidential to Tabcorp]

303. Again, the parameter estimates on the payout variable are [HIGHLY Confidential to Tabcorp], at any conventional level of confidence. Even without controlling for seasonality, the results again indicate that [Confidential to Tabcorp] [HIGHLY Confidential to Tabcorp] on turnover.

304. These specifications all show [HIGHLY Confidential to Tabcorp] on the variable indicating the period during which the payout rates were changed. While some of the effect of this variable may have been captured by other regressors, particularly in the regressions also controlling for calendar month or quarter, the various results lead to the same conclusion – the null hypothesis that changes in tote payout rates were not correlated with a change in turnover [HIGHLY Confidential to Tabcorp] reasonably be rejected.

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305. Tabcorp also **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]. Figure 53 and Figure 54 show these **[Confidential to Tabcorp]** [REDACTED] weekly tote payout rates, along with the corresponding turnovers, for each of the Victoria and New South Wales totes.

[HIGHLY Confidential to Tabcorp] [REDACTED]

306. Similar to the case of the **[Confidential to Tabcorp]** [REDACTED]
[REDACTED] in the periods before **[Confidential to Tabcorp]** [REDACTED] in payout rates, to the turnovers on the same exotic bets in comparable periods after **[Confidential to Tabcorp]** [REDACTED] in payout rates. In order to perform such a comparison, it is necessary to control for other factors, such as seasonality, or trends over time, which may affect turnover. The turnovers shown in Figure 53 and Figure 54 appear to exhibit significant seasonality, with fluctuations in similar months each year, and moreover there appears to be **[HIGHLY**

Confidential to Tabcorp [REDACTED] in the tote turnovers received from one year to the next.

307. The following simple regression model can be applied to control for seasonality and trends over time. Such a regression would test whether or not tote turnover was significantly higher in the period in which the payout rate was **Confidential to Tabcorp** [REDACTED], relative to similar months in adjacent years, while attempting to control for seasonality and trends in turnover over time.

308. Estimates from regression models specified similar to Table 1, Table 2 and Table 3 are shown below in Table 4, Table 5 and Table 6. Table 4 and Table 5 however differ from Table 1 and Table 2 by excluding the year dummies, and instead control for longer term trends by restricting the sample period; if year dummies were included, there is a risk that they would capture much of the effect as the variable of interest, in particular in periods after the **Confidential to Tabcorp** [REDACTED] in payout rates. This would mean that the impact of the payout variable and year variable could not be separately identified.



[HIGHLY Confidential to Tabcorp] [REDACTED]





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309. Each of these specifications once again indicates **[HIGHLY Confidential to Tabcorp]**  significant effect of **[Confidential to Tabcorp]**  tote payout rates on demand for tote wagering.

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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 “**PS-1**” to the expert report of **PATRICK SMITH** dated **9 March 2017**.

Exhibit PS-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

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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	Curriculum Vitae of Patrick Smith	TBP.001.027.2028
2	Expert Evidence Practice Note (GPN-EXPT)	TBP.001.027.2039
3	Letter of Engagement from Herbert Smith Freehills to Patrick Smith dated 1 December 2016	TBP.001.027.5183
4	Tabcorp ASX Release regarding proposed merger with Tatts Group Holdings dated 19 October 2016	TBP.011.001.0110
5	Presentation released to the ASX dated 19 October 2016	TBP.006.001.0121
6	Merger Implementation Deed	TBP.004.011.0610
7	Letter of Instructions from Herbert Smith Freehills to Patrick Smith dated 6 March 2017	TBP.001.029.0005
8	Screenshot of https://www.bestodds.com.au/odds/horse-racing/united-kingdom/Kempton_91184/Smarter-Bets-With-Matchbook-Betting-Exchange-Handicap_527602/	TBP.001.027.4323
9	Screenshot of https://www.google.com.au/trends/explore?q=Punters.com.au	TBP.001.027.4324
10	Screenshot of https://www.google.com.au/trends/explore?date=2015-01-01%202017-02-01&q=punters.com.au,sportsbet.com.au,tabcorp.com.au,ubet.com	TBP.001.027.4325

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Patrick Smith

Patrick Smith applies economics, econometrics and industrial expertise to competition policy, litigation and arbitration. He has testified and consulted to parties, government agencies and interveners in numerous high-profile, complex and multi-jurisdictional proceedings over the past decade.

Patrick has acted as an expert witness in numerous merger investigations, as well as investigations of horizontal and vertical agreements, including class actions and damages assessment, abuse of dominance inquiries, and in the assessment of pricing, profitability and valuation within mediation, dispute resolution and arbitration.

His experience includes testifying in *Streetmap v Google*, in the first “hot tub” procedure adopted in UK competition litigation; testifying in the linked transactions, *Thoroughbred Horseracing Trust/Kenilworth Racing* and *Gold Circle/Kenilworth Racing*, which were considered by the South African competition authorities as the acquisition by the largest horseracing administrator and the exclusive tote operator in 7 out of 9 provinces in South Africa, Phumelela, of control over the horseracing administrator and exclusive tote operator in an 8th province, Kenilworth Racing; acting as the expert instructed by the South African Competition Commission in its opposition to the consolidation of the last remaining independent African maize seed company (*Pioneer/Pannar*, which ended in the Constitutional Court); and acting as an expert for *First Quantum* in its arbitration against the DRC (ICC and ICSID) which culminated in a USD 1.25 billion settlement and acquisition.

He has particular expertise in undertaking in depth merger investigations before the European Commission, as well as authorities in South Africa, Australia, Canada, Germany, Spain, India, the UK and the US, and has worked on several transactions involving the coordination of economic advice and analysis across multiple jurisdictions globally. These include *AB InBev/SABMiller*, *Phumelela/Supabets*, *Vodacom/Neotel*, *Pioneer/Futurelife*, *PRS/GEMA/STIM*, *Chiquita/Fyffes*, *Federal Mogul/Honeywell*, *Syniverse/MACH*, *Universal/EMI*, *Gold Circle/Kenilworth Racing*, *Thaba Chueu/SamQuarz*, *Pioneer/Pannar*, *Sun Capital/DSP*, *ABF/GBI Business*, *Cisco/Tandberg*, *T-Mobile/Orange UK*, *Thomson/Reuters*, *Universal/BMG Music Publishing*, *Inco/Falconbridge*, *Syniverse/BSG*, *Dow/Rohm & Haas*, *InBev/Anheuser Busch*, *Nokia/Siemens* and *Anglo American/Kumba/Avmin*.

Mr Smith previously trained and worked as a chemical engineer, and holds a BSc (Hons. First Class), and MSc in chemical engineering from the University of Cape Town. He was later awarded a Rhodes Scholarship to study at Oxford University, where he obtained a BA in economics and management (First Class) and an MSc in economics for development. Mr Smith is an affiliate member of the Institute of Chemical Engineers.

Qualifications

- 2003 OXFORD UNIVERSITY
M.Sc. Economics for Development
- 2002 OXFORD UNIVERSITY
MA in Economics and Management (First Class)

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2000 UNIVERSITY OF CAPE TOWN

M.Sc. in Chemical Engineering

1998 UNIVERSITY OF CAPE TOWN

B.Sc. in Chemical Engineering (First Class Honours)

Selected prizes and awards

2003 Thesis prize, MSc in Economics for Development, Oxford

2000 Rhodes Scholarship, Zimbabwe and St John's College, Oxford

1998 Sasol Award and Malan Gold Medal (University of Cape Town, 1st Prize in Chemical Engineering), Thesis Prize, Design Project Prize

1995 Murray MacDougall Scholarship, Triangle Sugar Corporation Ltd.

Career details

2012 – present

RBB Economics

Partner (previously *Principal*)

2003 – 2012

NERA ECONOMIC CONSULTING

Associate Director (previously *Senior Consultant*), European Competition Policy Practice

2002 – 2003

Analyst, European Competition Policy Practice

2002

LAW AND BUSINESS ECONOMICS

Analyst

2001

PRICEWATERHOUSE COOPERS

Intern, Assurance and Business Advisory Services (ABAS)

1999 - 2000

TRIANGLE SUGAR CORPORATION LTD

Graduate Chemical Engineer, Laboratory Manager (2000)

1995 - 1998

TRIANGLE SUGAR CORPORATION LTD

Undergraduate Trainee Chemical Engineer

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Expert witness work

The following projects include some of the work Mr Smith has undertaken involving testimony or expert witness roles.

-
- **Anthony et al v Phumelela Gaming and Leisure Limited and 3 others (2016)**
 - Competition Tribunal (South Africa), Referral, Commission File No. 2014 March 0105.
 - Abuse of dominance, anti-competitive agreements. Horseracing administration and betting, audio-visual coverage.
 - Complaint withdrawn.
- **Southern Sun Hotels / Hospitality Property Fund (2016)**
 - Southern Sun Hotels (Pty) Ltd/Hospitality Property Fund, CC Reference No: 2015Dec0720, CT Reference No: LM218Jan16
 - Large merger. Hotel operations and hotel property ownership and leasing.
 - Expert report submitted. Merger approved subject to conditions.
- **Mpact / Remade (2016)**
 - Mpact Limited and Remade Holdings (Pty) Ltd and the Property Companies
 - CC Case No. 2015Jul0421 / CT Case No LM078 Jul15.
 - Large merger. Paper and plastic recycling and processing.
 - Expert report and oral testimony. Merger approved subject to conditions.
- **Lafarge Cement Zambia Plc (2016)**
 - Competition and Consumer Protection Commission, Zambia
 - Alleged abuse of dominance – excessive pricing. Supply of cement.
 - Expert report submitted. Ongoing.
- **Vodacom/Neotel (2015)**
 - Vodacom Proprietary Limited/Neotel Proprietary Limited CC Case Number: 2014Jul0382 / CT Case No: 19299.
 - Large merger. Mobile telecommunications and spectrum allocation.
 - Expert report submitted. Merger abandoned.
- **Streetmap v Google (2015)**
 - Streetmap.EU Limited v Google, Inc., Google Ireland Limited and Google UK Limited.

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- High Court, Chancery Division, Claim No. HC13E01013, Case No 2013-000090 and A3/2016/1210
- Alleged abuse of dominance. Internet search and online mapping services.
- Expert reports and oral testimony. Complaint dismissed with costs. Leave to appeal denied, further application for leave to appeal to the Court of Appeal - ongoing.
- **Pioneer/Futurelife (2015)**
 - Pioneer Foods Proprietary Limited/Future Life Health Products Proprietary Limited Competition Tribunal Case No: LM017May15Pioneer; Competition Commission Case No: 2015Apr0205; Competition Tribunal, Case No.: 020727.
 - Large Merger. Breakfast cereals and functional foods.
 - Expert report and oral testimony. Merger cleared, subject to hold-separate remedies.
- **Caxton and CTP Publishers and Printers and others v Multichoice and others (2015)**
 - Competition Tribunal, Case No.: 020727; Competition Appeal Court, Case No: 140/CAC/MAR16
 - Review of merger decision. Content, broadcasting and broadcasting policy.
 - Expert report submitted. Appeal upheld, case returned to the Commission for further investigation.
- **Kwazulu-Natal Bookmakers' Association and 2 others v Phumelela Gaming and Leisure Limited and 16 others (2015)**
 - High court (South Africa), Case No. 38728/2015.
 - Damages claim, assessment of effect of sports betting on bookmakers, and FRAND terms for horseracing content.
 - Expert report submitted in response to claimants' report. Ongoing.
- **PG Group (Pty) Ltd et al (Gas Users Group) vs NERSA and Sasol Gas Limited (2015)**
 - High Court (South Africa), Gauteng Division, Pretoria, Case No.: 57506/13.
 - Piped gas price regulation, fair terms for access to gas, regulatory review.
 - Expert reports submitted. Awaiting judgment.
- **Shopping centre exclusivity litigation (2014)**
 - High Court of South Africa, Gauteng Division, Pretoria, case number 31739/14. Pick N' Pay Retailers Proprietary Limited / Liberty Group Limited & Liberty Properties Group Proprietary Limited. Arbitration.
 - Shopping centre exclusivity lease agreements with potential effect on competition. Settled.
- **Construction Cartel (2014)**
 - High Court (South Africa).

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- Alleged collusion in large scale construction projects, tendering and bidding processes.
- Expert work for a major construction company. Ongoing.
- **LME vs BNK, BOC (2014)**
 - LCIA arbitrations 132365 & 132366, LITASCO Middle East DMCC vs BNK (UK) Ltd and Closed Joint Stock Company Belarusian Oil Company.
 - Arbitration relating to an agreement to supply oil at a European port, and ancillary agreements to facilitate the transport of that oil.
 - Expert report prepared to address allegations of infringements of competition law (Articles 101 and 102 of TFEU). Settled.
- **Marine repair facilities litigation (2014)**
 - High court (South Africa), and Competition Commission (South Africa).
 - Complaint and application for interim relief. Access to essential facilities (marine repair facilities). Dominance, abuse of dominance; effect on competition, motivation for interim relief.
 - Expert report submitted. Ongoing.
- **Ferro/Arkema (2014)**
 - Ferro Industrial Products (Pty) Limited / Arkema Resins (Pty) Limited, Competition Tribunal Case No: 018358, Competition Commission Case No: 2013Dec0602.
 - Intermediate merger, unsaturated polyester resins.
 - Expert reports and oral testimony. Merger approved subject to conditions.
- **Bankserv/Emid/Nomad (2014)**
 - Comesa Financial Exchange Proprietary Limited / Emid Holdings Proprietary Limited and Lexshell 129 General Trading Proprietary Limited / Nomad Information Systems Proprietary Limited, Competition Tribunal Case Numbers 017657 and 017665.
 - Contested merger reconsideration proceedings. Financial services systems, acquiring services, payments processing.
 - Expert report submitted. Merger settled subject to amended conditions.
- **Almenta Proprietary Limited and Others v Phumelela Gaming And Leisure Limited and Others (2014)**
 - High court (South Africa), Case No. 2014/03504.
 - FRAND terms for access to intellectual property. Dominance, pricing conduct, and abuse of dominance; competitive justification, net effect on competition. Horseracing and betting, audiovisual coverage.
 - Expert report submitted in response to application for interim relief. Interim relief application denied.

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- **Bread cartel (follow on damages) (2013)**
 - Competition Tribunal: Pioneer Foods, Case No. 15/CR/Feb07 and 50/CR/May08.
 - Western Cape High Court: case number 25302/2010, 26 November 2011.
 - Supreme Court of Appeal: Children's Resource Centre Trust v Pioneer Food, (50/2012)[2012] ZASCA 182 (29 November 2012).
 - Supreme Court of Appeal: Mukaddam and Others v Pioneer Food and Others (49/2012) [2012] ZASCA 183, Constitutional Court: Mukaddam and Others v Pioneer Foods and Others, Case CCT 131/12 [2013] ZACC 23.
 - Northern Gauteng High Court: Premier Foods (Proprietary) Limited v Norman Manoim N.O. and others, (38235/2012), 2 August 2013.
 - Supreme Court of Appeal: Premier Foods v Manoim N.O. and others, (20147/2014) [2015] ZASCA 159 (4 November 2015).
 - Expert report submitted. Settled.
- **Gold Circle/Kenilworth Racing (2012)**
 - Kenilworth Racing (Pty) Ltd / Gold Circle (Pty) Ltd (South African Competition Commission, CC Case No.: 2011DEC0429); The Thoroughbred Horseracing Trust / Kenilworth Racing (Pty) Ltd (South African Competition Commission, CC Case No.: 2011DEC0427); (Competition Tribunal, CT Case No: 36/AM/APR12)
 - Large merger. Horseracing and betting and audiovisual coverage.
 - Expert report and oral testimony. Merger approved subject to employment condition.
- **Thaba Chueu/SamQuarz (2012)**
 - Thaba Chueu Mining (Pty) Ltd / Samquarz (Pty) Ltd (South African Competition Commission, CC Case No 2011OCT0291; South African Competition Tribunal, CT Case No 10/Am/JAN12).
 - Mining of silica, production of silicon metal, ferrosilicon, silicon carbide.
 - Expert report and oral testimony. Merger approved subject to conditions.
- **First Quantum vs DRC (2012)**
 - Congo Mineral Developments Limited, Industrial Development Corporation of South Africa, and the International Finance Corporation vs the Democratic Republic of Congo and Gécamines (ICC International Court of Arbitration, Case No. 16918/ND).
 - Congo Mineral Developments Limited vs Highwind Properties Limited, Pareas Liomited, Interim Holdings Limited, and Blue Narcissus Limited (British Virgin Islands Commercial Court).
 - International Quantum Resources Limited, Frontier SPRL and Compagnie Minière de Sakania SPRL vs Democratic Republic of Congo (ICSID).
 - International arbitration. Copper and cobalt mining and processing.
 - Expert reports submitted. USD 1.25 billion settlement and acquisition.

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- **Pioneer/Pannar (2011)**
 - Pioneer Hi-Bred International Inc / Pannar Seed (Pty) Ltd (CT Case No: 81/AM/Dec10;
 - Pioneer Hi-Bred International Inc and Pannar Seed (Pty) Ltd vs The Competition Commission And African Centre For Biosafety (CAC Case No: 113/CAC/Nov11).
 - Large merger. Agricultural seeds and GM traits.
 - Expert reports and oral testimony for the Competition Commission. Merger prohibition by the Competition Commission upheld by the Competition Tribunal, overturned by the Competition Appeal Court, leave to appeal denied by the Supreme Court of Appeal; appeal against Competition Appeal Court award of costs against the Commission upheld by the Constitutional Court.
- **Polymers (2010)**
 - Competition Commission v Sasol Chemical Industries Ltd & Safripol (Pty) Ltd (South African Competition Commission, CC Case No. 2007/Nov3338; South African Competition Tribunal, CT Case No. 48/CR/Aug10; South African Competition Appeal Court, Case No: 131/CAC/Jun14.
 - Propylene/polypropylene, ethylene/polyethylene.
 - Horizontal agreements: expert reports submitted for Safripol, case settled.
 - Pricing complaints: complaint, reports submitted, complaints dismissed on appeal.
 - Mediation and arbitration: settled.
- **Universal Music Group/Vale Music (2006)**
 - Spanish TDC Phase II merger, for merging party. Expert submissions for the merging parties. Merger approved.

Administrative proceedings

The following projects include some of the work Mr Smith has undertaken involving administrative proceedings before competition authorities and other regulatory agencies, excluding confidential matters (in particular cartel investigations), risk assessments (including Art 101 self-assessments), unannounced, abandoned transactions and on-going projects.

- **Phumelela/Supabets (2016).** South African Competition Commission, Case No: 2016MAY0253, for merging parties. Cleared subject to conditions.
- **AB InBev/SABMiller (2016).** EC Phase I merger, for merging party. South African Competition Commission, Competition Tribunal. Cleared subject to conditions.
- **MTN/Smartvillage (2016).** South African Competition Commission, Case No: 2015NOV0608, for merging parties. Cleared subject to conditions.
- **MTN/Telkom RAN Roam (2015).** South African Competition Commission, Case No: 2014Apr0165, for merging parties. Withdrawn.

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- **PRS/GEMA/STIM (2015)**. EC Phase II merger, for merging party. Case number M.6800, Art. 8(2) with conditions & obligations.
- **Takealot/Kalahari (2014)**. South African Competition Commission, for merging party. Cleared unconditionally.
- **Chiquita Brands International/Fyffes (2014)**. EC Phase I merger, for merging party. Case number M.7220, Art. 6(1)(b) with conditions & obligations.
- **Nashua/MTN/Vodacom/Altech (2014)**. South African Competition Commission, for merging party. Cleared unconditionally.
- **Federal Mogul/Honeywell Friction Materials (2014)**. EC Phase I merger, for merging party. Case number M.7174, Art. 6(1)(b) with conditions & obligations.
- **Microsoft/Nokia (2014)**. EC Phase I merger, for third party. Case number M.7047, Art. 6(1)(b).
- **Premier Swazi Bakeries/Ngwane Mills (2014)**. Swaziland Competition Commission and Board, for merging parties, cleared subject to conditions.
- **Premier Group (Pty) Ltd /Eastern Cape Bakeries (2013)**. South African Competition Commission and Tribunal, for merging parties. Commission case number 017434, cleared unconditionally.
- **Bidvest/Mvelaserve (2013)**. South African Competition Commission, for third party.
- **Syniverse/MACH (2013)**. EC Phase II merger, CADE, Ukraine, Jersey, Argentina, Colombia, Taiwan, for merging party). EC case number M.6690, Art. 8(2) with conditions & obligations.
- **Universal Music Group/EMI Music (2012)**. EC Phase II merger, US FTC, Canadian Bureau of Competition, Japanese FTC, ACCC, NZ CC, CADE, for merging party. EC case number M.6458, Art. 8(2) conditions & obligations.
- **Sun Capital/DSM Special Products (2010)**. EC Phase I merger, for merging party. Case number M.5785, Art. 6(1) (b).
- **Cisco/Tandberg (2010)**. EC Phase I merger, for third party. Case number M.5669, Art. 6(1)(b).
- **T-Mobile/Orange (2010)**. EC Phase I merger, for third party. Case number M.5650, Art. 6(1)(b) with conditions & obligations. .
- **ABF/Azucarera (2009)**. EC Phase I merger, for merging party. Case number M.5449, Art. 6(1)(b).
- **Mitsubishi Rayon/Lucite (2009)**. Bundeskartellamt phase 1 merger, for merging party.
- **Dow/Rohm & Haas (2009)**. EC Phase I merger, for merging party. Case number M.5424, Art. 6(1)(b).
- **EdF/British Energy (2008)**. EC Phase I merger, for merging party. Case number M.5224, Art. 6(1)(b) with conditions & obligations.
- **BHP Billiton/Rio Tinto (2008)**. EC Phase II merger, for third party. Case number M.4985, Art. 6(1)(c), aborted / withdrawn.

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- **InBev/Anheuser Busch (2008)**. UK OFT, economic submissions, oral presentations, for merging party.
- **ABF/GBI Business (2008)**. EC Phase II merger, for merging party. Case number M.4980, Art. 8(2) with conditions & obligations.
- **Thomson Corporation/Reuters Group (2008)**. EC Phase II merger, for merging party. Case number M.4726, Art. 8(2) with conditions & obligations.
- **Syniverse/BSG (wireless business) (2007)**. EC Phase II merger, for merging parties. Case number M.4662, Art. 8(1).
- **Universal Music Group/BMG Music Publishing (2007)**. EC Phase II merger, for merging party. Case number M.4404, Art. 8(2) with conditions & obligations.
- **Classified Directory Advertising Services (“Yellow Pages”) (2006)**. UK Competition Commission Market Investigation, for the Competition Commission.
- **ABF/PDL (2006)**. UK OFT, for merging party.
- **Nokia/Siemens (2006)**. EC phase 1 merger, for merging parties. Case number M.4297, Art. 6(1)(b).
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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.

- NEXT TO JUMP**
- NORTHAM R4 -6 mins >
 - TURFFONTEIN R4 -6 mins >
 - HOBART R10 -11s >
 - ANGLE PARK R11 3 mins >
 - MANDURAH R4 6 mins >
 - DAPTO R11 10 mins >

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Kempton Race 3

- R1 R2 **R3** R4 R5 R6 R7 ALL

Kempton Race 3		Form Guide	WIN	PLACE													
SMARTER BETS WITH MATCHBOOK BETTING EXCHANGE HANDICAP (M)																	
Friday, 6 Jan at 3:00pm																	
	Bonus bet amount		\$200	\$200	\$500	\$501	\$505	\$700	\$300	\$500	\$400	\$600	\$200	\$250	\$500	\$500	
1	Lucymai (4) R Winston 09-08 st-lbs	2%				15	17	16		15		17	17		17	17.5	19.5
2	Spiritual Star (1) Paddy Bradley 09-07 st-lbs (a5)	0%				9	8.5	8.5		8.5		9	10		8.5	8.8	9.8
2nd	3 Choral Clan (8) Jack Mitchell 09-07 st-lbs	1%				5	4.6	4.6		4.2		5	4.5		4.6	4.7	5.2
	4 Gracious George (10) T J Murphy 09-06 st-lbs	10%				21	23	21		21		21	21		23	28	32
3rd	5 Rightway (9) George Downing 09-05 st-lbs (a3)	4%				41	51	41		41		41	34		51	50	70
	6 Papou Tony (11) L P Keniry 09-04 st-lbs	4%				10	9	9		8.5		9	13		9	9.8	11
	7 St Patrick's Day (6) D C Costello 09-03 st-lbs	2%				15	13	13		11		13	6		13	18	20
	8 Check 'em Tuesday (5) Charlie Bennett 09-02 st-lbs (a5)	3%				21	26	23		21		21	34		26	24	28
	9 With Approval (3) Callum Shepherd 09-02 st-lbs (a3)	0%				26	31	26		26		26	41		31	28	32
1st	10 Saleh (2) A Kirby 09-02 st-lbs	12%				3	2.8	2.7		2.7		3	3.25		2.8	2.94	3.2
	11 Almanack (12) Nathan Alison 09-01 st-lbs (a3)	5%				13	12	13		13		13	13		12	14.5	16.5
	12 Party Royal (7) M Dwyer 09-01 st-lbs	5%				34	34	34		34		34	17		34	44	55
Market percentage						115	119	122		127		116	120		119	111	99
Quick Bet			✓	✓	✓	✓	✓	✓		✓	✓	✓	✓				

RACING

- Horse Racing >
- Australia >
- Hong Kong >
- New Zealand >
- United Kingdom >
- TODAY
- Chelmsford City
- Huntingdon
- Sedgefield
- Wolverhampton
- TOMORROW
- Lingfield
- Wolverhampton
- Ireland >
- Singapore >
- South Africa >
- Greyhound Racing >
- Harness Racing >
- Horse Racing - Futures >

SPORT

- American Football >
- Australian Rules >
- Baseball >
- Basketball >

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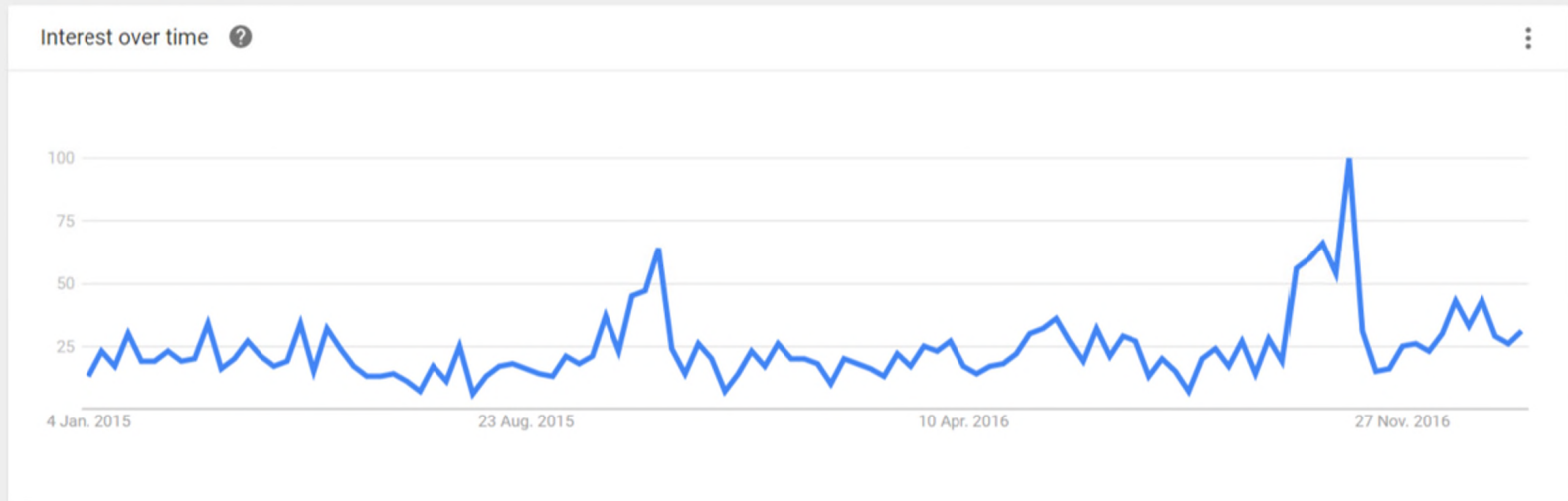
Luxbet	bookmaker	Ladbrokes	williamhill RECOMMENDED	sportsbet	PALMERBET	CrownBet
\$700*	\$400*	\$500*	\$505*	\$501*	\$500*	\$600*
JOIN OFFER	JOIN OFFER	JOIN OFFER	JOIN OFFER	JOIN OFFER	JOIN OFFER	JOIN OFFER

*NEW ACC ONLY, EXC NSW, SA, WA & VIC. TURNOVER REQUIREMENTS & EXPIRY PERIOD APPLY. SEE T&CS ON WEBSITE. GAMBLE RESPONSIBLY.

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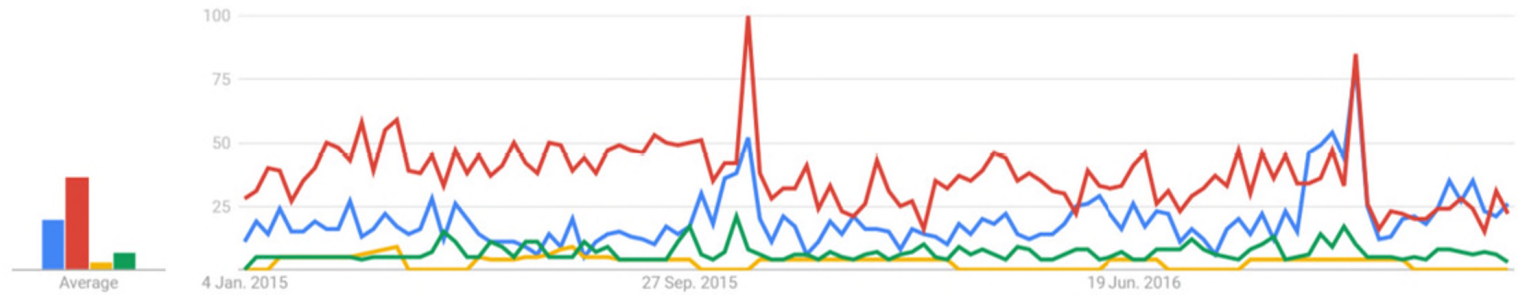
Worldwide ▾

1/1/15 - 1/2/17 ▾

All categories ▾

Web Search ▾

Interest over time ?





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Patrick Smith
Partner
RBB Economics
199 Bishopgate
London, United Kingdom EC2M 3TY
patrick.smith@rbbecon.com

1 December 2016
Matter 82602332
By Email

Dear Patrick

Confidential and Privileged

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

1 Introduction

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

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

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

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

2 Scope of your assignment

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

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

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

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

Doc 59059169.3



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

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

3 Confidentiality

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

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

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

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

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

4 Conflicts of interest

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

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

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

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

5 Fee estimate

Please provide us with details of your rates.

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

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

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



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6 Communications

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

6 Communications

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

7 Your duties and responsibilities as an expert witness

Your role is that of an independent expert.

You are not an advocate for any party.

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

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

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

Yours sincerely

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

date _____

sign here ► _____

name of expert PATRICK SMITH _____



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
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Patrick Smith
Partner
RBB Economics
199 Bishopgate
London, United Kingdom EC2M 3TY
United States of America 94618-2804
patrick.smith@rbbecon.com

6 March 2017
Matter 82602332
By Email

Dear Patrick

Confidential and Privileged

Instruction letter - Australian Competition Tribunal merger authorisation application

1 Introduction

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

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

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

2 Request for an 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 assessing the competitive effects and total economic welfare effects of the proposed merger on the racing industry in Australia?
- (b) What are the likely competitive effects and the likely effects on total economic welfare of the proposed merger on the racing industry in Australia?

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));
- The Tribunal assesses whether there is likely to be such a public benefit by weighing the 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



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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 Patrick Smith 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");
- (g) Presentation released to the ASX dated 19 October 2016 (TBP.006.001.0121.pdf);
- (h) Excel spreadsheets containing the following Tabcorp daily wagering turnover and revenue data:
 - (1) "TBP.015.001.1838.xlsx" (this is fixed odds data for FY06-FY08);
 - (2) "TBP.015.001.1839.xlsx" (this is fixed odds data for FY09-FY12);
 - (3) "TBP.015.001.1840.xlsx" (this is fixed odds data for FY13);
 - (4) "TBP.015.001.1841.xlsx" (this is fixed odds data for FY14);
 - (5) "TBP.015.001.1842.xlsx" (this is fixed odds for FY15);
 - (6) "TBP.015.001.1843.xlsx" (this is fixed odds for FY16);
 - (7) "TBP.015.001.4244.xlsx" (this is parimutuel odds for FY06);
 - (8) "TBP.015.001.4245.xlsx" (this is parimutuel odds for FY07);
 - (9) "TBP.015.001.4246.xlsx" (this is parimutuel odds for FY08);
 - (10) "TBP.015.001.4247.xlsx" (this is parimutuel odds for FY09H1);
 - (11) "TBP.015.001.4248.xlsx" (this is parimutuel odds for FY09H2);
 - (12) "TBP.015.001.4249.xlsx" (this is parimutuel odds for FY10H1);
 - (13) "TBP.015.001.4250.xlsx" (this is parimutuel odds for FY10H2);
 - (14) "TBP.015.001.4251.xlsx" (this is parimutuel odds for FY11H1);
 - (15) "TBP.015.001.4252.xlsx" (this is parimutuel odds for FY11H2);



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- (16) "TBP.015.001.4253.xlsx" (this is parimutuel odds for FY12H1);
 - (17) "TBP.015.001.4254.xlsx" (this is parimutuel odds for FY12H2);
 - (18) "TBP.015.001.4255.xlsx" (this is parimutuel odds for FY13H1);
 - (19) "TBP.015.001.4256.xlsx" (this is parimutuel odds for FY13H2);
 - (20) "TBP.015.001.4257.xlsx" (this is parimutuel odds for FY14H1);
 - (21) "TBP.015.001.4258.xlsx" (this is parimutuel odds for FY14H2);
 - (22) "TBP.015.001.4259.xlsx" (this is parimutuel odds for FY15H1);
 - (23) "TBP.015.001.4260.xlsx" (this is parimutuel odds for FY15H2);
 - (24) "TBP.015.001.4261.xlsx" (this is parimutuel odds for FY16H1);
 - (25) "TBP.015.001.4262.xlsx" (this is parimutuel odds for FY16H2);
 - (26) "TBP.015.001.4263.xlsx" (this is data for parimutuel pools for FY06-FY10);
 - (27) "TBP.015.001.4264.xlsx" (this is data for parimutuel pools for FY11-FY13);
 - (28) "TBP.015.001.4265.xlsx" (this is data for parimutuel pools FY14-FY15);
 - (29) "TBP.015.001.4266.xlsx" (this is data for parimutuel pools FY16);
 - (30) "TBP.015.001.5185.xlsx" (this is data for Trackside FY06-FY16);
 - (31) "TBP.015.001.3788.xlsx" (this is Luxbet data for FY09-FY12);
 - (32) "TBP.015.001.3789.xlsx" (this is Luxbet data for FY13-FY14); and
 - (33) "TBP.015.001.3790.xlsx" (this is Luxbet data for FY15-FY16);
- (i) Explanatory guide for the FY06-FY16 Tabcorp data ("TBP.015.001.1826.pdf"); and
- (j) List of new Tabcorp products, offers and takeout rate changes, and applicable time periods ("TBP.015.001.3737.pdf").

Yours sincerely

PP

Paul Hughes
Partner
Herbert Smith Freehills

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

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.



HERBERT
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Deed

EXECUTION

Merger implementation deed

Tabcorp Holdings Limited

Tatts Group Limited

rodd.levy@hsf.com



Contents

Table of contents

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



Contents

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



HERBERT
SMITH
FREEHILLS

Contents

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



HERBERT
SMITH
FREEHILLS

Contents

Attachment 1
Scheme of arrangement

Attachment 2
Deed poll



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Merger implementation deed

Date ► 18 October 2016

Between the parties

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

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

Recitals

- 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="634 1830 1263 1884">1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity; <li data-bbox="634 1895 1235 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

Table of contents

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



Schedule 1

Tabcorp Representations and Warranties

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

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

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

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



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



Schedule 2

Tatts Representations and Warranties

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

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

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

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

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



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



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Schedule 3

Tabcorp details

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



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Schedule 4

Tatts details

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




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Signing page

Executed as a deed

Signed sealed and delivered by
Tabcorp Holdings Limited
by

sign here ▶



Company Secretary/Director

print name

JANE DWYER

sign here ▶



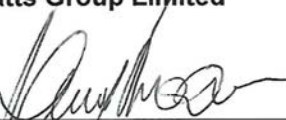
Director

print name

DAVID ATTENBOROUGH

Signed sealed and delivered by
Tatts Group Limited
by

sign here ▶



Company Secretary/Director

print name

HARRY BEAN

sign here ▶



Director

print name

Robert Michael Sean Cooke



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Attachment 1

Scheme of arrangement

Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Tatts Group Limited
Tatts

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

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

Contents

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

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

Date

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

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

Background

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

1. Definitions and interpretation

1.1 Definitions

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

ASIC means the Australian Securities and Investments Commission.

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

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

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

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

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

Corporations Act means the Corporations Act 2001 (Cth).

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

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

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

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

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

End Date has the meaning given in the Implementation Deed.

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

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

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

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

Listing Rules means the official listing rules of ASX.

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

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

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

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

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

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

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

subject to the terms of this Scheme.

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

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

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

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

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

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

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

Tatts Board means the board of directors of Tatts.

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

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

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

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

Trading Day has the meaning given in the Listing Rules.

1.2 Interpretation

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

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

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

1.3 Business Day

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

2. Conditions Precedent

2.1 Conditions to the Scheme

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

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

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

2.2 Certificates in relation to Conditions Precedent

On the Second Court Date:

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

2.3 Termination of Implementation Deed

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

3. Scheme

3.1 Effective Date of the Scheme

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

3.2 Lapse of Scheme

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

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

4. Implementation of Scheme

4.1 Lodgement

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

4.2 Transfer of Scheme Shares

On the Implementation Date:

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

4.3 Provision of Scheme Consideration

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

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

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

4.4 Joint holders

In the case of Scheme Shares held in joint names:

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

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

4.5 Unclaimed monies

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

4.6 Fractional entitlements and share splitting or division

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

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

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

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

4.7 Binding instruction or notifications

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

4.8 Orders of a Court of Government Agency

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

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

until such time as provision of the Scheme Consideration in accordance with this clause 4.8 is permitted by that (or another) order or direction or otherwise by law.

4.9 Ineligible Foreign Shareholders

- (a) Tabcorp will be under no obligation to issue any New Tabcorp Shares under this Scheme to any Ineligible Foreign Shareholder and instead, subject to clauses 4.6 and 4.8, Tabcorp will ensure that New Tabcorp Shares to which an Ineligible Foreign Shareholder would otherwise have been entitled (if they were a Scheme Shareholder) will be issued to a nominee appointed by Tabcorp.
- (b) Tabcorp will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
 - (i) sells or procures the sale on the financial market conducted by ASX of all of the New Tabcorp Shares issued to the nominee pursuant to clause 4.9(a) in such manner, at such price and on such other terms as the nominee reasonably determines; and

- (ii) remits to Tabcorp the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- (b) Promptly after the last sale of New Tabcorp Shares in accordance with clause 4.9(b), Tabcorp will pay to each Ineligible Foreign Shareholder the proportion of the net proceeds of sale received by Tabcorp pursuant to clause 4.9(b)(ii) to which that Ineligible Foreign Shareholder is entitled.
- (c) Neither Tabcorp nor Tatts gives any assurance as to the price that will be achieved for the sale of New Tabcorp Shares described in clause 4.9(b)(ii). The sale of the New Tabcorp Shares under this clause 4.9 will be at the risk of the Ineligible Foreign Shareholder.
- (d) Tabcorp must appoint the nominee at least 10 Business Days prior to the Scheme Meeting.
- (e) Tabcorp must make payments to Ineligible Foreign Shareholders under clause 4.9(b) by either (in the absolute discretion of Tatts):
 - (i) where an Ineligible Foreign Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Tatts Share Registry to receive dividend payments by Tatts by electronic funds transfer to a bank account nominated by the Ineligible Foreign Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) otherwise, whether or not the Ineligible Foreign Shareholder has made an election referred to in clause 4.9(e)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Ineligible Foreign Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Ineligible Foreign Shareholder (or in the case of joint holders, in accordance with the procedures in clause 4.4).
- (f) If Tatts receives professional advice that any withholding or other tax is required by law to be withheld from a payment to an Ineligible Foreign Shareholder, Tatts is entitled to withhold the relevant amount before making the payment to the Ineligible Foreign Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme, including clause 4.9(b)(ii). Tatts must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Ineligible Foreign Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Foreign Shareholder.
- (g) Each Ineligible Foreign Shareholder appoints Tatts as its agent to receive on its behalf any financial services guide (or similar or equivalent document) or other notices (including any updates of those documents) that the nominee is required to provide to Ineligible Foreign Shareholders under the Corporations Act or any other applicable law.
- (h) Payment of the amount calculated under 4.9(b)(ii) to an Ineligible Foreign Shareholder in accordance with this clause 4.9 satisfies in full the Ineligible Foreign Shareholder's right to the Scrip Consideration.
- (i) Where the issue of New Tabcorp Shares to which a Scheme Shareholder would otherwise be entitled under this Scheme would result in a breach of law or of a provision of the constitution of Tabcorp:

- (i) Tabcorp will issue the maximum possible number of New Tabcorp Shares to the Scheme Shareholder without giving rise to such a breach; and
- (ii) to the maximum extent permitted by law, any further New Tabcorp Shares to which that Scheme Shareholder is entitled, but the issue of which to the Scheme Shareholder would give rise to such a breach, will instead be issued to the nominee and dealt with under the preceding provisions in this clause 4.9, as if a reference to an Ineligible Foreign Shareholder also included that Scheme Shareholder and references to that person's New Tabcorp Shares in that clause were limited to the New Tabcorp Shares issued to the nominee under this clause.

4.10 Status of New Tabcorp Shares

Tabcorp covenants in favour of Tatts (in its own right and on behalf of each Scheme Shareholder) that:

- (a) the New Tabcorp Shares issued as Scrip Consideration will, on their issue, rank equally in all respects with all other Tabcorp Shares on issue at the Effective Date;
- (b) it will use all reasonable endeavours to ensure that the New Tabcorp Shares issued as Scrip Consideration will be listed for quotation on the official list of the ASX with effect from the Business Day after the Effective Date (or such later date as ASX may require), initially on a deferred settlement basis and, with effect from the Business Day following the Implementation Date, on an ordinary (T+2) settlement basis; and
- (c) on issue, each New Tabcorp Share will be duly and validly issued in accordance with all applicable laws and Tabcorp's constitution, fully paid and, to the extent within the control of Tabcorp, free from any Encumbrance.

5. Dealings in Tatts Shares

5.1 Dealings in Tatts Shares by Scheme Shareholders

For the purposes of establishing the identity of Scheme Shareholders, dealings in Tatts Shares will only be recognised by Tatts if:

- (a) in the case of dealings of the type to be effected on CHESSE, the transferee is registered in the Tatts Share Register as the holder of the relevant Tatts Shares on or before the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the place where the Tatts Share Register is kept by 4:00 pm on the day which is the Record Date (in which case Tatts must register such transfers before 7:00 pm on that day),

and Tatts will not accept for registration, or recognise for the purpose of establishing who are Scheme Shareholders, any transmission application or transfer in respect of Tatts Shares received after such times on the Record Date.

5.2 Tatts Share Register

For the purposes of determining entitlements to the Scheme Consideration, Tatts will until the Scheme Consideration has been paid and Tabcorp has been entered in the Tatts Share Register as the holder of all of the Scheme Shares, maintain the Tatts Share Register in accordance with the provisions of this clause 5, and the Tatts Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

5.3 Information to be made available to Tabcorp

Tatts must procure that, as soon as practicable following the Record Date and in any event by 5:00pm on the first Business Day after the Record Date, details of the names, registered addresses and holdings of Tatts Shares of every Scheme Shareholder shown in the Tatts Share Register at the Record Date are made available to Tabcorp in such form as Tabcorp may reasonably require.

5.4 Effect of share certificates and holding statements

As from the Record Date (and other than for Tabcorp, following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title in respect of those Scheme Shares and, as from that date, each entry on the Tatts Share Register at that date (other than entries in respect of Tabcorp) will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

5.5 No disposals after Record Date

If the Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date, and any attempt to do so will have no effect and Tatts shall be entitled to disregard any such disposal.

6. Suspension and termination of quotation

- (a) Tatts must apply to ASX for suspension of trading of the Tatts Shares on ASX with effect from the close of trading on the Effective Date.
- (b) Tatts must apply to ASX for termination of official quotation of the Tatts Shares on ASX and the removal of Tatts from the official list of ASX with effect from the Business Day immediately following the Implementation Date.

7. General Scheme provisions

7.1 Appointment of agent and attorney

Each Scheme Shareholder, without the need for any further act:

- (a) on the Implementation Date, irrevocably appoints Tatts and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney for the purpose of executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the share transfer(s) to be delivered under clause 4.2 and the giving of the Scheme Shareholders' consent under clause 7.3; and
- (b) on the Effective Date, irrevocably appoints Tatts and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney for the purpose of enforcing the Deed Poll against Tabcorp,

and Tatts accepts such appointment. Tatts, as agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 7.1 to all or any of its directors, officers or secretaries (jointly, severally or jointly and severally).

7.2 Enforcement of Deed Poll

Tatts undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Tabcorp (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

7.3 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably:

- (a) consents to Tatts and Tabcorp doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or desirable to the implementation and performance of the Scheme; and
- (b) acknowledges that the Scheme binds Tatts and all of the Tatts Shareholders from time to time (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the resolution to approve this Scheme).

7.4 Scheme Shareholder's agreements

Under the Scheme:

- (a) each Scheme Shareholder to whom New Tabcorp Shares are to be issued in accordance with this Scheme:
 - (i) agrees to become a member of Tabcorp and to have their name entered in the Tabcorp Share Register; and
 - (ii) accepts the New Tabcorp Shares issued under this Scheme on the terms and conditions of the constitution of Tabcorp and agrees to be bound by the constitution of Tabcorp as in force from time to time, without the need for any further act by a Scheme Shareholder;
- (b) each Scheme Shareholder agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Tabcorp in accordance with the terms of this Scheme; and
- (c) agrees to the variation, cancellation or modification (if any) of the rights attached to their Scheme Shares constituted by or resulting from this Scheme.

7.5 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Tabcorp and, to the extent enforceable, appointed and authorised Tatts as its agent to warrant to Tabcorp, that:

- (a) all of its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Tabcorp under this Scheme, be fully paid and free from all Encumbrances and security interests (within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)), and from any interests of third parties or any restrictions on transfer of any kind (whether legal or otherwise), and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to Tabcorp under this Scheme. Tatts undertakes that it will provide such warranty to Tabcorp as agent and attorney of each Scheme Shareholder; and
- (b) it has no existing right to be issued any other Tatts Shares or any other form of Tatts securities. Tatts undertakes that it will provide such warranty to Tabcorp as agent and attorney of each Scheme Shareholder.

7.6 Title to Scheme Shares and transfer free from encumbrance

- (a) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated under clause 4.3, Tabcorp will be beneficially entitled to the Scheme Shares transferred to it under this Scheme

pending registration by Tatts of Tabcorp in the Tatts Share Register as the holder of the Scheme Shares.

- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Tabcorp, will, at the time of transfer to Tabcorp, vest in Tabcorp free from all Encumbrances and security interests (within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and free from any restrictions on transfer of any kind.

7.7 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 4.3, and until Tatts registers Tabcorp as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Tabcorp as attorney and agent (and directed Tabcorp in each such capacity) to appoint any director, officer, secretary or agent nominated by Tabcorp as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 7.7(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Tabcorp reasonably directs; and
- (d) acknowledges and agrees that, in exercising the powers referred to in clause 7.7(a), Tabcorp and any director, officer, secretary or agent nominated by Tabcorp under clause 7.7(a) may act in the best interests of Tabcorp as the intended registered holder of the Scheme Shares.

7.8 Alterations and Conditions

Tatts may, by its counsel or solicitors, and with the consent of Tabcorp by its counsel or solicitors, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to the Scheme which the Court may impose, and each Scheme Shareholder agrees to such alterations or conditions which Tatts has agreed to.

7.9 Notices

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Tatts, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Tatts' registered office or at the Tatts Share Registry (as the case may be).

7.10 Inconsistencies

This Scheme binds Tatts and all Tatts Shareholders, and to the extent of any inconsistency, overrides Tatts' constitution.

7.11 Further assurance

Tatts and Tabcorp will execute all documents and do all acts and things as may be necessary or desirable for the implementation of, and performance of their respective obligations under, this Scheme.

7.12 Stamp Duty

Tabcorp will:

- (a) pay any stamp duty payable and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from its failure to comply with clause 7.12(a).

7.13 Governing Law

This Scheme is governed by the law applying in Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and the courts competent to determine appeals from those courts, with respect to any proceedings in connection with the Scheme.



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Attachment 2

Deed poll



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EXECUTION

Deed Poll

Tabcorp Holdings Limited



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Deed Poll

Date ►

This deed poll is made

By **Tabcorp Holdings Limited ABN 66 063 780 709**
of 5 Bowen Crescent, Melbourne, Victoria, Australia, 3004
(**Tabcorp**)

in favour of each person registered as a holder of fully paid ordinary shares in Tatts Group Limited (**Tatts**) in the Tatts Share Register as at the Scheme Record Date.

Recitals

- 1 Tatts and Tabcorp have entered into the Implementation Deed.
- 2 In the Implementation Deed, Tabcorp agreed to make this deed poll.
- 3 Tabcorp is making this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under the Implementation Deed and the Scheme.

This deed poll provides as follows:

1 Definitions and interpretation

1.1 Definitions

(a) The meanings of the terms used in this deed poll are set out below.

Term	Meaning
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
Implementation Deed	the merger implementation deed entered into between Tatts and Tabcorp dated 18 October 2016.



Term	Meaning
Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Tatts and the Scheme Shareholders, the form of which is annexed to this deed poll, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Tabcorp and Tatts.
(b)	Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll.

1.2 Interpretation

Sections 1.2 and 1.3 of the Scheme apply to the interpretation of this deed poll, except that references to 'this Scheme' are to be read as references to 'this deed poll'.

1.3 Nature of deed poll

Tabcorp acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Tatts and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Tabcorp.

2 Conditions to obligations

2.1 Conditions

This deed poll and the obligations of Tabcorp under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of Tabcorp under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective on or before the End Date,

unless Tabcorp and Tatts otherwise agree in writing.

2.3 Consequences of termination

If this deed poll terminates under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Tabcorp is released from its obligations to further perform this deed poll except those obligations under clause 7.1; and



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- (b) each Scheme Shareholder retains the rights they have against Tabcorp in respect of any breach of this deed poll which occurred before it was terminated.

3 Scheme Consideration

3.1 Undertaking to provide Scheme Consideration

Subject to clause 2, Tabcorp undertakes in favour of each Scheme Shareholder to:

- (a) in relation to cash component of the Scheme Consideration (**Cash Consideration**), deposit, or procure the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Cash Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Tatts as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Tabcorp's account;
- (b) in relation to the scrip component of the Scheme Consideration (**Scrip Consideration**), provide the Scrip Consideration to each Scheme Shareholder in accordance with the terms of the Scheme; and
- (c) undertake all other actions and obligations attributed to it under the Scheme, subject to and in accordance with the provisions of the Scheme.

3.2 Shares to rank equally

Tabcorp covenants in favour of each Scheme Shareholder that the New Tabcorp Shares are issued to each Scheme Shareholder in accordance with the Scheme will:

- (a) rank equally with all Tabcorp Shares existing at the issue date;
- (b) be duly and validly issued in accordance with all applicable laws and Tabcorp's constitution; and
- (c) be issued fully paid and free from any mortgage, charge, lien, encumbrance or other security interest, or any third party right.

4 Warranties

Tabcorp represents and warrants in favour of each Scheme Shareholder, in respect of itself, that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and



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- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

5 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Tabcorp has fully performed its obligations under this deed poll; or
 (b) the earlier termination of this deed poll under clause 2.

6 Notices

6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
 (b) addressed to Tabcorp in accordance with the details set out below (or any alternative details nominated by Tabcorp by Notice).

Address	Addressee	Email
5 Bowen Crescent, Melbourne, VIC 3004	The Company Secretary	Fiona.Mead@tabcorp.com.au

6.2 How Notice must be given and when Notice is received

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

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

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By email to the nominated email address	When the email (including any attachment) comes to the attention of the recipient party or a person acting on its behalf.



7 General

7.1 Stamp duty

Tabcorp:

- (a) will pay all stamp duty and any related fines and penalties in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a).

7.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in Victoria, Australia.
- (b) Tabcorp irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll.

7.3 Waiver

- (a) Tabcorp may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) The meanings of the terms used in this clause 7.3 are set out below.

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

7.4 Variation

A provision of this deed poll may not be varied unless the variation is agreed to by Tabcorp and:

- (a) if before the First Court Date, the variation is agreed to by Tatts; or
- (b) if on or after the First Court Date, the variation is agreed to by Tatts and the Court indicates that the variation would not of itself preclude approval of the Scheme,



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FREEHILLS

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.

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Transaction benefits

Tabcorp and Tatts to combine to create a world-class, diversified gambling entertainment group

1 Creates a leading, diversified portfolio of gambling entertainment businesses

- long-dated suite of licences
- well positioned to invest, innovate and compete in a rapidly evolving marketplace
- larger and more diversified earnings base, with a broad national footprint
- well positioned to pursue growth opportunities globally

2 Provides a wide range of benefits for stakeholders and enhances the long-term sustainability of the Australian racing industry

- at least \$50 million per annum in additional funding expected to flow to the racing industry in Australia
- provides a pathway to national pooling for pari-mutuel wagering, subject to regulatory and racing industry approvals

3 Significant value creation expected for both sets of shareholders

- expected to deliver at least \$130 million per annum EBITDA synergies and business improvements, net of benefits to the racing industry
- expected to be EPS accretive (before significant items) and value accretive for both Tabcorp and Tatts shareholders
- Combined Group expected to target a dividend payout ratio of 90% of NPAT before significant items and amortisation of the Victorian Wagering and Betting Licence
- Combined Group expected to undertake a share buyback of \$500 million, post implementation of the Transaction and subject to Board approval and market conditions

4 Greater scale and strong balance sheet position

- combined pro forma enterprise value of approximately \$11.3 billion¹, revenue of over \$5 billion and EBITDA of over \$1 billion²
- balance sheet strength better facilitates growth and potential capital management opportunities – Combined Group intends to have an investment grade credit rating

5 Complementary businesses, delivering a winning offer for customers

- combines the best of both businesses to support investment and innovation, including best-in-class digital products
- supports an enhanced range of products and experiences across each of our channels and products

Notes:

- 1 Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction and pro forma net debt of the Combined Group as at 30 June 2016
- 2 Based on reported FY 2016 revenue and EBITDA for Tabcorp and Tatts. Excludes the impact of synergies and business improvements

Transaction summary

Tabcorp and Tatts have entered into an Implementation Deed to combine the two companies

Structure	<ul style="list-style-type: none"> • Tatts shareholders to receive 0.80 Tabcorp shares plus 42.5 cents cash for each Tatts share held <ul style="list-style-type: none"> – Tatts intends to pay its shareholders a fully-franked special dividend of 20 cents per share (subject to the availability of franking credits) immediately prior to implementation of the Transaction in lieu of part of the cash consideration. A fully-franked dividend of 20 cents per share would have approximately 8.6 cents per share of franking credits attached¹ • Transaction to be implemented via a Tatts Scheme of Arrangement
Combined Group	<ul style="list-style-type: none"> • World-class, diversified gambling entertainment group • Combined Group pro forma enterprise value of approximately \$11.3 billion² and expected to be an ASX50 company • Tabcorp and Tatts shareholders will own approximately 42% and 58% of the Combined Group, respectively³
Board and management composition	<ul style="list-style-type: none"> • Board will be comprised of the existing Tabcorp Directors with Paula Dwyer as Chairman • David Attenborough will be Managing Director and Chief Executive Officer of the Combined Group and Damien Johnston will be Chief Financial Officer • Tatts Chairman Harry Boon will join the Board of the Combined Group as a Non-Executive Director
Key approvals and Transaction timing	<ul style="list-style-type: none"> • Obtaining competition, regulatory and other approvals • Tatts shareholders approving the Tatts Scheme of Arrangement • Obtaining Court approval for the Scheme and an independent expert concluding the Transaction is in the best interests of Tatts shareholders • Other conditions as set out in the Implementation Deed (appended to the Transaction announcement) • Completion expected mid-2017
Board and shareholder support	<ul style="list-style-type: none"> • Transaction is unanimously recommended by the Boards of Tabcorp and Tatts⁴ • AustralianSuper, one of Tatts' largest shareholders, has indicated that it intends to vote its Tatts shares in favour of the Transaction, in the absence of a superior proposal and subject to there being no material adverse change in circumstances

Notes:

1 Whilst Tatts estimates the special dividend will be 20 cents per Tatts share, under the Implementation Deed Tatts is able to pay a special dividend of up to 25 cents per share (subject to the availability of franking credits)

2 Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction and pro forma net debt of the Combined Group as at 30 June 2016 (including estimated transaction costs). Excludes impact of synergies and business improvements


3 Based on Tabcorp's ordinary shares outstanding of 835 million and Tatts' fully diluted shares outstanding of 1,469 million (including performance rights) as at 18 October 2016

4 In the Tatts Board's case, subject to there being no superior proposal and also to an independent expert concluding the Transaction is in the best interests of Tatts shareholders

Overview of the Combined Group

Combination delivers scale to support future growth and an enhanced ability to invest and innovate in a highly competitive and rapidly evolving market

- Combined pro forma enterprise value of approximately \$11.3 billion and market capitalisation of \$8.6 billion^{1,2}
- Combined pro forma FY 2016 revenue of over \$5 billion and EBITDA of over \$1 billion, before synergies and business improvements

Pro forma Combined Group, before synergies and business improvements and any proposed share buyback	Tabcorp	 TattsGroup	Combined Group ³
Market capitalisation ¹ (\$ million)	4,084	5,273	8,644
Net debt (\$ million) ² — 30 June 2016	870	1,041	2,626
Enterprise value (\$ million)	4,955	6,315	11,270
Revenue (\$ million) — FY 2016	2,189	2,928	5,117
EBITDA (\$ million) — FY 2016	516	495	1,011
EBIT (\$ million) — FY 2016	337	420	757
Net debt / EBITDA (x) (pre synergies and business improvements)	1.7x	2.1x	2.6x
Gross debt / EBITDA (x) (pre synergies and business improvements)	1.9x	2.2x	2.8x

- Transaction costs are estimated to be approximately \$90 million

Source: Bloomberg as at 18 October 2016, Company filings

Notes:

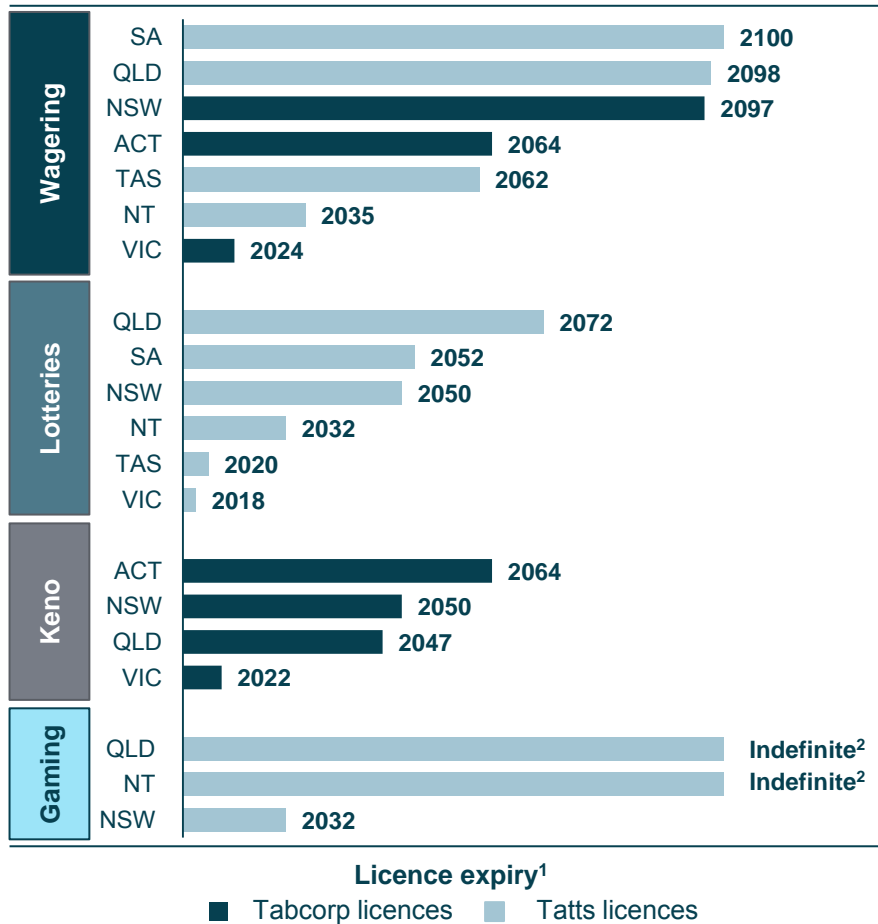
1 Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction

2 Pro forma net debt of the Combined Group as at 30 June 2016 (including estimated transaction costs of \$90 million) adjusted for cash paid to Tatts shareholders under the Transaction of \$624 million based on a cash consideration component of 42.5 cents per Tatts share and Tatts' fully diluted shares outstanding of 1,469 million (including performance rights)

3 Does not account for any differences in accounting treatment, disclosure, inter-group eliminations and acquisition accounting adjustments. Presented before synergies and business improvements

Stronger and more diversified portfolio of businesses

Combination delivers an enhanced portfolio of long-dated licences and a more diverse earnings base



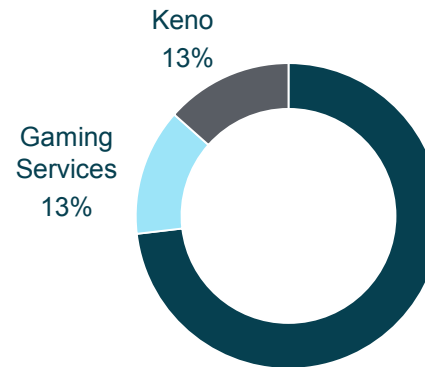
Source: Company filings

Notes:

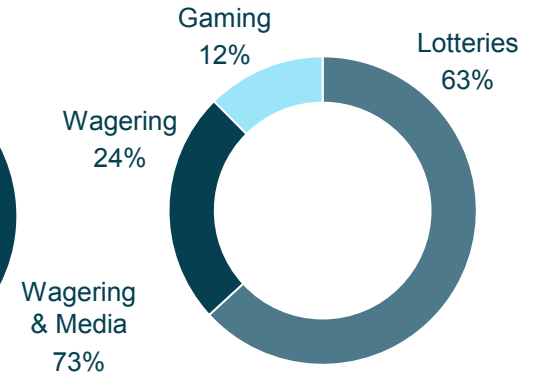
1 Tatts' NT Wagering licence expires in 2035, Tabcorp's NT Wagering licence in 2020; some licences (e.g. Tabcorp's VIC Wagering, Tatts' TAS Wagering) have renewal options post expiry; Tatts' SA Lotteries licence includes SA Keno; both Tatts and Tabcorp are accredited gaming operators in Australia

2 Indefinite rolling renewal capability

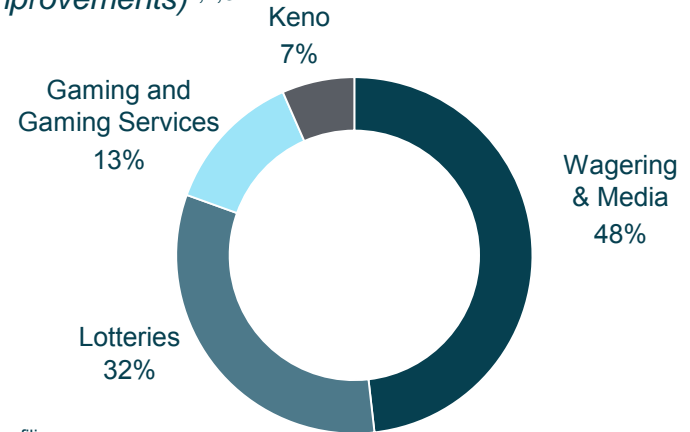
FY 2016 EBITDA—Tabcorp^{1,2}



FY 2016 EBITDA—Tatts^{1,2,3}



Pro forma FY 2016 EBITDA—Combined Group (before synergies and business improvements)^{1,2,3}



Source: Company filings

Notes:

1 Figures expressed on a pre adjustment basis, as currently reported by Tatts and Tabcorp before unallocated corporate expenses, excluding discontinued operations















2 Percentages may not sum to 100% because of rounding

3 Contribution of Lotteries earnings includes Tatts' SA Keno business

Combines two largely complementary businesses

Combines two Australian industry icons, creating a champion of gambling entertainment with a national footprint across a broad suite of leading brands and products

The Combined Group's businesses, brands and jurisdictions

Business	Key brands	Geographic reach								
		VIC	NSW	ACT	QLD	SA	TAS	NT	WA	Intl.
Wagering	   <small>BACKED BY TABCORP</small> 	✓	✓	✓	✓	✓	✓	✓		✓
Lotteries	    	✓	✓	✓	✓	✓	✓	✓		
Keno		✓	✓	✓	✓	✓				
Gaming and Gaming Services	  <small>TABCORP GAMING SOLUTIONS</small>  <small>Limited</small>	✓	✓	✓	✓	✓	✓	✓	✓	
Media		✓	✓	✓	✓	✓	✓	✓	✓	✓

Source: Company filings, company website

Note:

1 Subject to implementation of the Intecq scheme of arrangement

Significant synergies to be generated from the combination

Expected to deliver at least \$130 million of annual EBITDA synergies and business improvements, net of benefits to the racing industry. Estimated synergies and business improvements valued at approximately \$1.4 billion¹

Opex synergies	<ul style="list-style-type: none"> • Technology integration and systems optimisation • Consolidation of wagering functions • Corporate cost rationalisations • Procurement benefits from increased scale
Wagering performance optimisation under the TAB brand	<ul style="list-style-type: none"> • Fixed odds yield improvement <ul style="list-style-type: none"> – Tabcorp intends to roll-out its leading risk management systems and processes into the UBET business – the larger combined Tabcorp and Tatts fixed odds book further increases the risk management capability of the Combined Group – fixed odds yields in the ACT improved significantly in the 12 months after Tabcorp's acquisition of ACTTAB • Wagering turnover growth <ul style="list-style-type: none"> – alignment of product offering between Tatts' and Tabcorp's wagering operations, including TAB products such as Cash Out and Quaddie Cash Out (subject to regulatory approval) – targeted investment in the UBET retail network based on TAB's market-leading multi-channel offering – combined digital expertise to deliver best-in-class digital products and customer experience – potential further benefits from the increased attractiveness of merged pools, subject to regulatory and racing industry approvals
Keno performance optimisation	<ul style="list-style-type: none"> • Extend the key drivers of the Keno transformation of brand, pooling and digital to South Australia (subject to regulatory approval) <ul style="list-style-type: none"> – following the introduction of similar measures in Victoria during FY 2016, Tabcorp achieved turnover growth of 18%
Capex synergies	<ul style="list-style-type: none"> • It is expected that approximately \$10 million per annum of capex synergies (net of benefits to the racing industry) will be available to the Combined Group through the rationalisation of wagering systems development functions. These are in addition to the \$130 million annual EBITDA synergies and business improvements
Integration	<ul style="list-style-type: none"> • Integration is expected to be completed in approximately two years, subject to the receipt of regulatory approvals • Full run-rate of synergies and business improvements expected in the first full year post integration • Net one-off integration costs and capital expenditure is estimated at approximately \$110 million

Source: Bloomberg as at 18 October 2016, Company filings

Note:

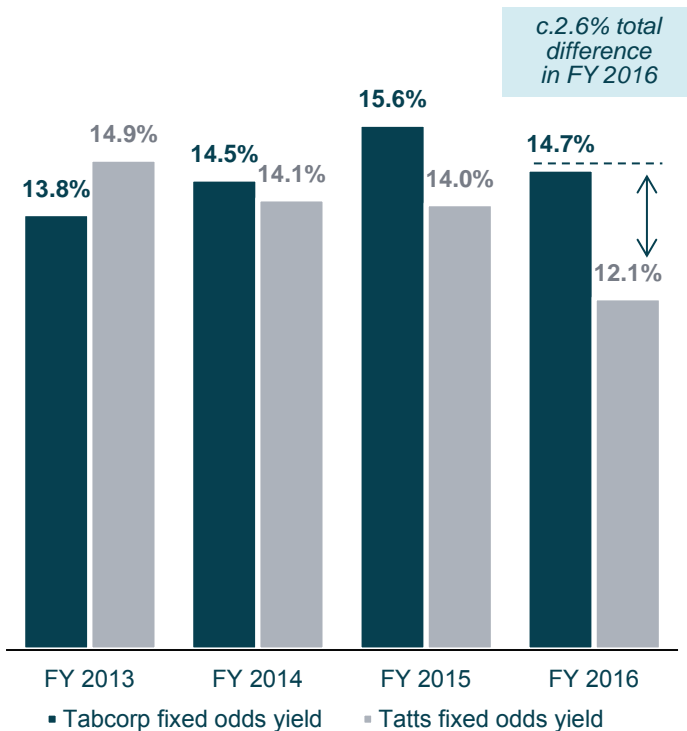
¹ Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction and based on Bloomberg consensus FY 2017 EBITDA estimates as at 18 October 2016, implying an EV/EBITDA multiple for Tabcorp of 9.1x, Tatts of 12.4x and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

Summary of wagering performance optimisation under the TAB brand

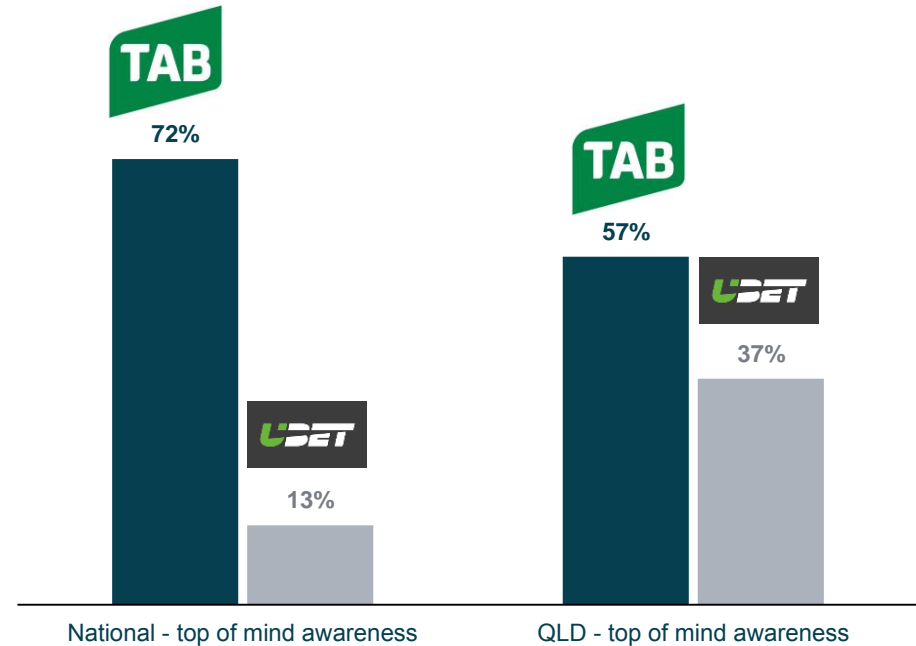
The Combined Group is expected to benefit from Tabcorp's fixed odds yield management capability and market leading TAB brand and product offering

Significant earnings are expected to be available through combining fixed odds book management

The Combined Group is expected to benefit from TAB's market leading brand and product offering



Source: Tabcorp and Tatts management



Source: Brand Health Tracking (FiftyFive5) September 2016

Increased financial scale and balance sheet strength

Combined Group is expected to be an ASX50 listed company, with a strong balance sheet and an investment grade credit rating

- Strong balance sheet
 - increased financial scale and associated balance sheet strength provides an enhanced platform to pursue growth opportunities
- Larger and more diversified earnings base
- The Combined Group will target a gross debt to EBITDA ratio of 3.0x to 3.5x and intends to have an investment grade credit rating
- Expects to undertake a share buyback of \$500 million, post implementation of the Transaction and subject to Board approval and market conditions
- Greater relevance to equity investors
 - Combined Group expected to be one of the largest ASX-listed gambling companies, based on free float market capitalisation¹
- Greater relevance to debt investors
 - improved credit profile given diversification benefits of lotteries and increased scale of wagering business



Source: Bloomberg as at 18 October 2016, Company filings

Note:

¹ Based on the pro forma market capitalisation for the Combined Group of \$8.6 billion and free float market capitalisations of ASX-listed gambling related businesses as at 18 October 2016

Benefits to both sets of shareholders

Combination to deliver significant benefits to both sets of shareholders

	 TattsGroup	 Tabcorp
Exposure to an enhanced business profile, with a more diversified portfolio of long-dated gambling licences, that is better placed to invest, innovate and compete	✓	✓
EPS accretion (before significant items) and value accretion expected, benefiting from at least \$130 million of annual EBITDA synergies and business improvements, net of benefits to the racing industry	✓	✓
Improved ability to pursue global investment opportunities	✓	✓
Improved financial position and balance sheet strength, with an intended investment grade credit rating and the capacity to undertake capital management	✓	✓
\$500 million share buyback expected, post implementation of the Transaction (subject to Board approval and market conditions)	✓	✓
Expected target dividend payout ratio of 90% of NPAT before significant items and amortisation of the Victorian Wagering and Betting Licence	✓	✓

The Transaction implies a value of \$4.34 per Tatts share (before taking into account the value from synergies and business improvements and any potential re-rating) which represents a premium of 20.8% to the most recent closing price¹, a premium of 18.4% to the 1-month VWAP² and a FY 2016 EV/EBITDA multiple of 15.0x for Tatts³

Source: Bloomberg as at 18 October 2016, Company filings

Note:

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

2 Based on the 1-month volume weighted average price of Tatts shares up to and including 17 October 2016, being the last trading day prior to the announcement of the Transaction

3 Based on Tatts' reported net debt of \$1,041 million as 30 June 2016, FY 2016 reported EBITDA of \$495 million, Tatts' fully diluted shares outstanding of 1,469 million (including performance rights) and the Tabcorp share price as at 17 October 2016, being the last trading day prior to the announcement of the Transaction

Enhancing the sustainability of the Australian racing industry

The combination creates a strong wagering operator, committed to enhancing the long-term sustainability of Australia's racing industry

- Tabcorp and Tatts are together the largest source of funding for the Australian racing industry, having delivered approximately \$1 billion to the racing industry in FY 2016
- The Combined Group's commitment to investment, national footprint and enhanced operational strength will create a stronger business, and provide a strong financial base to support the racing industry and the livelihood of its many participants and related industries
- The combination is expected to deliver substantial financial benefits to underpin the sustainability of the Australian racing industry
 - provides a more efficient funding model
 - the Transaction is expected to result in at least \$50 million per annum of additional funding to the racing industry, which will flow to participants and related industries across Australia
 - supports increased prize money and provides more capital for investment in racing infrastructure
 - creates broader economic benefits, including in regional areas
- The Combined Group will work to drive industry growth, investing in innovation across products and channels to improve the retail experience and deliver best-in-class digital platforms
 - national footprint offering a broader suite of market-leading products
 - better placed to invest in innovation across an expanded platform
 - provide a pathway to national pari-mutuel pooling, subject to racing industry and regulatory approvals, and an enhanced ability to adopt strategies to address the national decline in pari-mutuel betting
 - Tabcorp's track record of investment and racing industry returns delivers greater certainty of funding to the industry nationally

Enhancing the strength of Australian business partners

The combination is expected to deliver material benefits to Tatts' and Tabcorp's business partners including lottery retail agents, licensed venues and TAB agencies

Lottery retail agents (newsagents and convenience stores)

- Continue to proactively work with retail agents to grow and attract new customers
- Continued commitment to invest in product innovation, customer experience and targeted digital integration

Licensed venues (pubs and clubs)

- Continued integration of digital experience into retail venues to allow pubs and clubs to participate in the growth of digital wagering
- Increased investment in the combined retail network and the venue-based customer experience to deliver an improved offer for licensed venue customers
- Extend the key drivers of the Keno transformation of brand, pooling and digital to South Australia

TAB agencies

- Continued integration of digital experience into retail to allow TAB agencies to participate in the growth of digital wagering
- Continued commitment to invest in customer experience and product initiatives

Enhancing the customer offering

The Combined Group will deliver a winning offer for customers, including an increased range of products and high quality customer experiences across each channel

- The combination is expected to significantly enhance customer experiences across each of the Combined Group's products and channels:
 - better positioned to continue to invest in retail networks and provide compelling customer experiences
 - combined business allows us to provide a broader and more innovative suite of products, as well as an enhanced ability to introduce new customer-led products and omni-channel experiences
 - combined digital expertise to deliver best-in-class digital products and user experiences across the Combined Group's digital channels
 - results in larger fixed odds books and provides a pathway to delivering deeper and more liquid betting pools, increasing the attractiveness of pari-mutuel products to customers
- The Combined Group will continue to deliver world-class customer service, building on each organisation's significant customer service expertise
- The combination of two of Australia's most respected and trusted operators will ensure a strong continued focus on and commitment to responsible gambling

Conclusion

The Transaction creates a world-class, diversified gambling entertainment group with a wide range of benefits to all key stakeholders

Shareholders



The Australian racing industry



Business partners



Customers



Our people



Both Boards unanimously recommend the Transaction



19 October 2016

Tabcorp and Tatts to combine to create a world-class, diversified gambling entertainment group

- Creates a leading, diversified portfolio of gambling entertainment businesses well placed to compete in a rapidly evolving marketplace and pursue growth opportunities globally
- Anticipated to provide a wide range of benefits for stakeholders and is expected to result in at least \$50 million per annum of additional funding to the Australian racing industry, which enhances its long term sustainability
- Pro forma enterprise value of approximately \$11.3 billion¹, revenue of over \$5 billion, EBITDA of over \$1 billion² and a strong balance sheet with an intended investment grade credit rating
- Combination expected to deliver at least \$130 million of annual EBITDA synergies and business improvements, net of benefits to the racing industry
- Transaction expected to be EPS accretive (before significant items) and value accretive for both Tabcorp and Tatts shareholders
- Combined Group expected to target a dividend payout ratio of 90% of net profit after tax, before significant items and amortisation of the Victorian Wagering and Betting Licence
- Combined Group expected to undertake a \$500 million share buyback, post implementation of the Transaction and subject to Board approval and market conditions
- Completion expected mid-2017 following Tatts shareholder, regulatory and other approvals
- Transaction is unanimously recommended by the Boards of Tabcorp and Tatts³

Transaction details

Tabcorp Holdings Limited ("Tabcorp") and Tatts Group Limited ("Tatts") are pleased to announce the companies have reached an agreement to combine the two companies via a Tatts Scheme of Arrangement in which Tatts shareholders will receive 0.80 Tabcorp shares plus 42.5 cents cash for each Tatts share held (the "Transaction").

The Transaction will create a world-class, diversified gambling entertainment group, with a pro forma enterprise value of approximately \$11.3 billion¹, a national footprint and a diverse suite of product offerings across wagering, media, lotteries, Keno and gaming services (the "Combined Group").

Based on the most recent closing price of Tabcorp shares (\$4.89 per share as at 17 October 2016), the Transaction implies a value of \$4.34 per Tatts share (before the value of synergies and business improvements). This represents:

- a premium of approximately 20.8% to the most recent closing price of Tatts shares (\$3.59 per share);

¹ Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction and pro forma net debt of the Combined Group as at 30 June 2016

² Based on reported FY 2016 revenue and EBITDA for Tabcorp and Tatts. Excludes the impact of synergies and business improvements

³ In Tatts Board's case, subject to there being no superior proposal and also to an independent expert concluding the Transaction is in the best interests of Tatts shareholders



- a premium of approximately 18.4% to the 1-month volume weighted average price ("VWAP") of Tatts shares (\$3.66 per share)⁴; and
- an implied enterprise value (EV) for Tatts of \$7.4 billion and an implied FY 2016 EV/ EBITDA valuation multiple of 15.0x.⁵

On completion of the Transaction, existing Tabcorp shareholders will own approximately 42% of the Combined Group and existing Tatts shareholders will own approximately 58%.⁶

Based on a blended FY 2017 EV/EBITDA multiple for Tabcorp and Tatts of 10.7x⁷, the estimated synergies and business improvements are worth approximately \$1.4 billion.⁸

Taking into account the estimated synergies and business improvement benefits, the Transaction implies a pro forma value uplift for Tatts shareholders of approximately 30% per Tatts share (before taking into account any potential market re-rating).⁹

Tatts intends to pay its shareholders a fully-franked special dividend of 20 cents per share¹⁰ (subject to the availability of franking credits) immediately prior to implementation of the Transaction in lieu of part of the cash consideration. A fully-franked dividend of 20 cents per share would have approximately 8.6 cents per share of franking credits attached.

The Directors of both Tabcorp and Tatts believe the Transaction represents a unique and compelling opportunity to create significant value for Tabcorp and Tatts shareholders, a winning offer for customers and material benefits for stakeholders, including the racing industry, TAB agencies, licensed venues, small businesses, and Federal, State and Territory Governments and regional communities.

The Directors of Tabcorp believe the Transaction is in the best interests of Tabcorp shareholders and unanimously support the Transaction. The Directors of Tatts believe the Transaction is in the best interests of Tatts shareholders and unanimously recommend that Tatts shareholders vote in favour of the Transaction, in the absence of a superior proposal and subject to an independent expert concluding the Transaction is in the best interests of Tatts shareholders. Subject to those considerations, the Directors of Tatts intend to vote all shares they personally hold in favour of the Transaction.

AustralianSuper, one of Tatts' largest shareholders, has indicated that it intends to vote its Tatts shares in favour of the Transaction, in the absence of a superior proposal and subject to there being no material adverse change in circumstances.

⁴ Based on the 1-month volume weighted average price of Tatts shares up to and including 17 October 2016, being the last trading day prior to the announcement of the Transaction

⁵ Based on Tatts' reported net debt of \$1,041 million as 30 June 2016, FY 2016 reported EBITDA of \$495 million, Tatts' fully diluted shares outstanding of 1,469 million (including performance rights) and the Tabcorp share price as at 17 October 2016, being the last trading day prior to the announcement of the Transaction

⁶ Based on Tabcorp's ordinary shares outstanding of 835 million and Tatts' fully diluted shares outstanding of 1,469 million (including performance rights) as at 18 October 2016

⁷ Based on the Bloomberg consensus FY 2017 EBITDA estimates as at 18 October 2016, implying an FY 2017 EV/EBITDA multiple for Tabcorp of 9.1x, Tatts of 12.4x and the implied weighted average for the Combined Group of 10.7x

⁸ Based on \$130 million of expected EBITDA synergies and business improvements

⁹ Based on the Bloomberg consensus FY 2017 NPAT estimates as at 18 October 2016, implying a FY 2017 P/E multiple for Tabcorp of 20.6x, Tatts of 19.6x and an implied weighted average for the Combined Group of 20.0x. Potential value uplift assuming Transaction terms and taking into account full pro forma run-rate EBITDA synergies and business improvements of \$130 million, estimated transaction costs of approximately \$90 million and net one-off estimated integration costs and capital expenditure of approximately \$110 million

¹⁰ Whilst Tatts estimates the special dividend will be 20 cents per Tatts share, under the Implementation Deed Tatts is able to pay a special dividend of up to 25 cents per share (subject to the availability of franking credits)



Chairman's comment

Tabcorp's Chairman, Paula Dwyer, said:

"In today's rapidly changing landscape, bringing together our businesses will create a strong and diversified business that is well placed to invest, innovate and compete, both in Australia and globally.

"This Transaction is expected to deliver significant value for both sets of shareholders, and material benefits to other key stakeholders including the racing industry, business partners, customers, and Governments.

"Together we will be able to pursue more investment and innovation to deliver a winning offer for customers, including best-in-class digital products and experiences.

"In wagering, combining our two complementary businesses will give us a national footprint and could create a pathway to larger wagering pools. We are excited by this opportunity, which we believe will deliver an enhanced wagering experience for our customers and, in turn, will generate stronger returns to the Australian racing industry, underpinning its sustainability.

"At the same time, bringing together our lotteries, Keno and gaming services businesses will give us the capability to create an even more compelling offer for customers and retail stakeholders as the combination increases capability, while increasing diversification."

Tatts' Chairman, Harry Boon, said:

"The combination of Tabcorp and Tatts is based on clear industrial logic and a strong and tangible synergy proposition. It comes at a time of escalating competition from new business models and rapid consolidation of gaming and wagering companies globally. The scale and efficiency benefits from this combination will provide a stronger platform in this dynamic environment.

"We believe the implied value accretion for Tatts shareholders fairly reflects the strategic value of our businesses. Further, the scrip consideration allows Tatts shareholders the opportunity to participate as shareholders in the Combined Group, with ongoing exposure to the future growth of wagering, while also retaining exposure to Tatts' unique and growing lotteries business.

"In addition to our shareholders, the benefits of this combination are also very clear for the racing industry and for customers who should, in due course and with racing industry support, be able to access deeper and more liquid wagering pools.

"A combination of Tabcorp and Tatts has been the subject of numerous discussions between the two companies over time and this transaction is fully supported by our respective Boards."

Significant value for Tabcorp and Tatts shareholders

The Directors of both Tabcorp and Tatts expect the Transaction to deliver a number of financial and other benefits to both sets of shareholders:

- The Combined Group is expected to have an attractive, diversified national portfolio of predominantly long-dated gambling licences, and be strongly positioned to invest, innovate and compete in an evolving marketplace
- The Transaction is expected to generate earnings per share accretion (before significant items) and value accretion for both Tabcorp and Tatts shareholders. The combination is expected to deliver at least \$130 million of annual EBITDA synergies and business improvements, net of benefits to the racing industry, in the first full year following completion of integration. Completion of integration is expected to take approximately two years, subject to the receipt of all necessary regulatory approvals.



Net one-off estimated integration costs and capital expenditure are estimated at approximately \$110 million

- The Combined Group is expected to have a strong balance sheet, with the capacity to pursue capital management initiatives. The Combined Group will target a gross debt to EBITDA ratio of 3.0x to 3.5x and intends to have an investment grade credit rating
- The Combined Group expects to undertake a \$500 million share buyback, post implementation of the Transaction and subject to Board approval and market conditions
- The Combined Group is expected to target a dividend payout ratio of 90% of net profit after tax, before significant items and amortisation of the Victorian Wagering and Betting Licence. Both Tabcorp and Tatts expect to continue to pay dividends in the ordinary course (subject to the Implementation Deed) until implementation of the Transaction

Benefits to the Australian racing industry and beyond

- Tabcorp and Tatts are together the largest source of funding for Australia's racing industry, having delivered approximately \$1 billion to the racing industry in FY 2016
- The Combined Group's commitment to investment, its national footprint and enhanced operational platform will create a stronger business, and provide a strong financial base to support the racing industry, strengthening its overall sustainability
- The Transaction is expected to result in at least \$50 million per annum of additional funding to the racing industry, which will flow to participants and related industries across Australia
- Additional payments to the racing industry will create broader economic benefits, including in regional areas
- The Transaction provides a pathway to national pooling for pari-mutuel wagering, subject to regulatory and racing industry approvals and an enhanced ability to adopt strategies to address the national decline in pari-mutuel betting

Profile of the Combined Group

The Combined Group is expected to have a pro forma enterprise value of approximately \$11.3 billion, market capitalisation of approximately \$8.6 billion¹¹, revenue of over \$5 billion and EBITDA of over \$1 billion.¹²

The Combined Group will have diversified national wagering, media, lotteries, Keno, and gaming operations including:

Wagering & Media

- Totalisator and fixed odds licences and retail wagering networks in NSW, VIC, QLD, SA, TAS, ACT and NT, offering wagering products in approximately 4,300 retail outlets
- National Sky Racing media business

Lotteries

- An iconic Australian lotteries business with licences to offer products in NSW, VIC, QLD, SA, TAS, ACT and NT

¹¹ Based on the closing share prices of Tabcorp and Tatts as at 17 October 2016, being the last trading day prior to the announcement of the Transaction. Pro forma net debt of the Combined Group as at 30 June 2016 (including estimated transaction costs of \$90 million) adjusted for cash paid to Tatts shareholders under the Transaction of \$624 million based on a cash consideration component of 42.5 cents per Tatts share and Tatts' fully diluted shares outstanding of 1,469 million (including performance rights). Excludes synergies and business improvements

¹² Based on reported FY 2016 revenue and EBITDA of Tabcorp and Tatts. Excludes impact of synergies and business improvements



Keno

- Keno distribution network of over 4,200 venues across clubs, hotels and TAB agencies in VIC, QLD, SA and the ACT, and in clubs and hotels in NSW

Gaming Services

- Gaming machine monitoring operations in NSW, QLD and NT under the MAX and Odyssey¹³ brands, and venue services operations nationwide, under the TGS, Intecq¹³ and Bytecraft brands

Governance

The Combined Group will benefit from a highly experienced Board and senior executive team.

The Board will be comprised of the existing Tabcorp Board of Directors with Paula Dwyer as Chairman. Tatts Chairman Harry Boon will join the Board of the Combined Group as a Non-Executive Director following implementation of the Transaction.

David Attenborough will be Managing Director and Chief Executive Officer of the Combined Group and Damien Johnston will be Chief Financial Officer.

Implementation process

In addition to the approval by Tatts shareholders of the Tatts Scheme of Arrangement, the Transaction is also subject to satisfying regulatory conditions, including competition approval and approvals from various industry and State Government wagering, gaming, monitoring and lotteries regulators, obtaining court approval for the Scheme and an independent expert concluding the Transaction is in the best interests of Tatts shareholders.

The obligations of Tabcorp and Tatts regarding the implementation of the Transaction, the deal protections and break fee are agreed and set out in the Implementation Deed entered into by both parties. A copy of this Deed is attached to this announcement.

Tabcorp and Tatts currently expect the Transaction to complete in mid-2017 following Tatts shareholder, regulatory and other approvals.

Transaction costs are estimated at approximately \$90 million.

Presentation and market briefing details

To provide an overview of the Transaction in further detail, a presentation has also been released to the ASX today.

A briefing for investors and analysts will be held today at 10.00 a.m. AEDT. The briefing will be hosted by Paula Dwyer, Chairman of Tabcorp, Harry Boon, Chairman of Tatts, David Attenborough, Managing Director and Chief Executive Officer of Tabcorp and Robbie Cooke, Managing Director and Chief Executive Officer of Tatts.

Advisers

UBS is acting as financial adviser and Herbert Smith Freehills is acting as legal adviser to Tabcorp.

Goldman Sachs is acting as financial adviser and Clayton Utz is acting as legal adviser to Tatts.

¹³ Subject to implementation of the Intecq scheme of arrangement

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