

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT of 20

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

Tatts Group Limited (Intervener)



Statement of: **Frank Makryllos**

Address: 87 Ipswich Road, Woolloongabba, 4102, Queensland

Occupation: Chief Operating Officer - Gaming

Date: 9 March 2017

This document contains confidential information which is indicated as follows:

[Confidential to Tatts] [.....]

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On 9 March 2017, I FRANK MAKRYLLOS of 87 Ipswich Road, WOOLLOONGABBA, 4102, Queensland, Chief Operating Officer, say:

1. I am the Chief Operating Officer of Gaming Services at Tatts Group Limited (**Tatts**).
2. This statement is made in relation to an application by Tabcorp Holdings Limited (**Tabcorp**) to the Australian Competition Tribunal (**Tribunal**) for authorisation of the merger of Tatts and Tabcorp.
3. Exhibited to me at the time of making this statement and marked "Exhibit FM-1" is a bundle of documents. Exhibited to me at the time of making this statement is a further bundle of documents marked "Confidential Exhibit FM-2". Where in this statement I refer to documents, I refer to them by reference to their unique document number beginning with a "TAT" prefix. I have reviewed those documents prior to signing this statement. Tatts claims confidentiality over Confidential Exhibit FM-2.
4. My curriculum vitae is at **Tab 1 of Exhibit FM-1 [TAT.001.028.0019]**.
5. I have worked in the lotteries, gaming and wagering industries in Australia for 25 years. Over that time, I have acquired detailed knowledge and expertise in relation to all aspects of the gaming, wagering and lotteries businesses which Tatts conducts, and in particular, its gaming services business and the markets in which Tatts operates that business including:
 - (a) the identity of Tatts' competitors;
 - (b) the nature and extent of competition between Tatts and its competitors; and
 - (c) developments affecting competition in the gaming services industry.
6. Whilst Tatts' business comprises substantial wagering, gaming and lotteries businesses, this statement is concerned principally with Tatts' gaming services business. The statement is arranged by reference to the following subject matters:
 - (a) gaming services generally, including an overview of electronic gaming machines (**gaming machines**) and the Australian gaming industry (Section A);
 - (b) gaming monitoring services, including an overview and a description of the suppliers of gaming monitoring services in each State and Territory - including Tatts' *Maxgaming* monitoring business (Section B);
 - (c) gaming systems and related services, including an overview and a description of the suppliers of gaming systems and related services in each State and Territory - including Tatts' *Maxgaming* and *Bytecraft* businesses (Section C);
 - (d) the extent of competition faced by Tatts in relation to the supply of gaming systems and related services in New South Wales, Victoria and Queensland, and the supply of monitoring services in Queensland (Section D).

SECTION A - GAMING SERVICES - AN OVERVIEW

Gaming machines

7. A gaming machine is a device designed for the playing of a game of chance that pays out money, tokens or a right to the payment of money. The user of the gaming machine pays an amount to use it and places bets on it by selecting the lines to be played, the amount to be bet per line and then placing the bet by pushing a button which sets the device's reels in motion. Depending on where the device's reels land, the user may win a prize or sum of money. Gaming machines are most commonly referred to in Australia as poker machines. In Western

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Australia, a gaming machine is not configured in the same way as a typical poker machine in all other jurisdictions. Poker machines are prohibited in Western Australia, although gaming machines are permitted in the local casino. In Western Australia, a gaming machine is not permitted to include a spinning reel which is a common feature of most other poker machines.

8. The number of gaming machines is capped in all States and Territories of Australia as follows:
 - (a) **NSW** - section 10 of the *Gaming Machines Act 2001* (NSW) sets the maximum number of gaming machines at "99,000 or such lower number as may be prescribed by the regulations";
 - (b) **QLD** - sections 10A and 10G of the *Gaming Machine Regulations 2002* (Qld) set the maximum number of gaming machines at 44,205 (excluded from this cap are gaming machines within Queensland's casinos);
 - (c) **ACT** - section 3 of the *Gaming Machine (New Maximum Number of Authorisations) Notice 2016 (No 2)* (ACT) sets the maximum number of gaming machines at 4,986;
 - (d) **VIC** - subsection 3.4A.5(3) of the *Gambling Regulation Act 2003* (Vic), by Order published in the Government Gazette, sets the maximum number of gaming machines at 27,372 (excluding the gaming machines within Melbourne's Crown Casino);
 - (e) **TAS** - subsection 101B(b) of the *Gaming Control Act 1993* (Tas) sets the maximum number of gaming machines at 3,680;
 - (f) **SA** - regulation 5A of the *Gaming Machines Regulations 2005* (SA) sets the maximum number of gaming machines at 13,081;
 - (g) **NT** - regulation 2AA of the *Gaming Machine Regulations 1995* (NT) sets the maximum number of gaming machines at 1,852; and
 - (h) **WA** - Perth's Crown Casino (the only venue in Western Australia permitted to operate gaming machines) is authorised to operate a maximum of 2,400 gaming machines (as at 30 June 2016).
9. There are currently approximately 186,000 gaming machines in hotels, clubs and other licensed premises in Australia (not including Australian casinos), of which approximately:
 - (a) 50% are located in New South Wales;
 - (b) 23% are located in Queensland (including gaming machines within Queensland casinos);
 - (c) 2.5% are located in the Australian Capital Territory;
 - (d) 14% are located in Victoria;
 - (e) 2% are located in Tasmania;
 - (f) 6.5% are located in South Australia;
 - (g) 1% are located in Western Australia; and
 - (h) 1% are located in the Northern Territory.

10. Gaming machines are typically located in hotels, clubs and casinos across the different Australian States and Territories. In Western Australia, gaming machines (as described in paragraph 7) are only located at Perth's Crown Casino.

Overview of gaming industry

11. The Australian gaming industry can be sub-divided into a number of segments, including:
- (a) **Gaming machine manufacturing and supply:** which includes selling, supplying and financing gaming machines to venues holding a gaming machine license; and purchasing gaming machines from manufacturers for the purpose of resupplying those gaming machines to venues holding a gaming machine license;
 - (b) **Gaming systems and related services:** which includes:
 - (i) providing gaming system technology and "add-on" solutions such as player loyalty schemes and linked jackpots to venues holding a gaming machine license;
 - (ii) the provision of repair, maintenance and support services in relation to gaming hardware and software (other than updates to, or repair and maintenance of, third parties' software);
 - (iii) financing gaming machines for venues and supplying venue management services and other gaming advice and consultancy services; and
 - (c) **Gaming monitoring services:** which include monitoring the operation of gaming machines in each State and Territory to ensure they are operating to compliant standards, as well as for taxation and research purposes.
12. Tatts supplies gaming monitoring services and gaming systems and related services through its related bodies corporate Maxgaming QLD Pty Limited, Maxgaming NSW Pty Limited, and subsidiaries and affiliates (**Maxgaming**) and Bytecraft Systems Pty Ltd (**Bytecraft**), as outlined below. Tatts does not manufacture gaming machines, but may in New South Wales re-supply gaming machines which contain a state-wide linked jackpot service as an agent of a gaming machine manufacturer.

SECTION B: GAMING MONITORING SERVICES

Gaming monitoring services - an overview

13. In every Australian State and Territory, except the Australian Capital Territory, the law requires that gaming machines be monitored for integrity, taxation and regulatory purposes. Gaming machines operating in clubs and hotels are required to be connected to a central monitoring system (**CMS**) provided by a licensed monitoring operator (referred to as an "LMO" in Queensland, and a monitor in all other Australian States and Territories). In this statement, I refer to all licensed monitoring operators as **Monitors**.
14. For completeness, I note that Crown Casino in Perth is Western Australia's only casino, and it self-monitors all of its gaming machines. In this statement, I do not regard the owner or operator of that casino as a Monitor because it does not supply monitoring services to anyone outside of Crown's own operations in Perth.
15. The main differences between the monitoring systems used in Queensland and New South Wales are that in Queensland, the Local Area Network (**LAN**) which connects each gaming machine within a venue is owned by the venue, and the Monitor has the ability to disable individual gaming machines (for example, where the Monitor suspects that the gaming

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machine has been tampered with or if it malfunctions). In New South Wales, the LAN in each venue is owned by the Monitor and the Monitor cannot disable individual gaming machines. In Victoria and South Australia, a Monitor owns the LAN (as it does in New South Wales), but the Monitor has the capacity, and may be required by the regulator, to disable the gaming machines.

16. A Monitor's CMS gathers statistical data on each gaming machine to collate security and financial reports. The electronic meter readings collected by the CMS are submitted to the relevant State or Territory gambling governing bodies by the Monitor for regulatory and taxation purposes. Generally speaking, a Monitor's CMS is connected directly to gaming machines via a site controller. The site controller continually communicates with the gaming machines and stores security events (e.g. door openings) and meter readings.
17. Customers of Monitors include:
 - (a) licensed clubs, hotels and casinos (depending on the State or Territory) which own and operate gaming machines;
 - (b) groups such as the Australian Leisure and Hospitality Group Pty Limited (**ALH**) and Liquorland (QLD) Pty Ltd trading as Spirit Hotels (**Spirit Hotels**) that own numerous licensed hotels and own and operate gaming machines;
 - (c) Australia's State and Territory gaming regulators (for example, the Office of Liquor Gaming and Racing New South Wales, the Victorian Commission for Gambling and Liquor Regulation, the Office of Liquor, Gaming and Racing Queensland, Consumer and Business Services South Australia and Liquor and Gaming Tasmania) that receive services from Monitors and in some instances a license fee from Monitors for the grant of monitoring licenses.
18. Despite there being differences between Australian jurisdictions as to the functions capable of being performed by Monitors, in broad terms, the functions performed by Monitors in each jurisdiction are similar and may include:
 - (a) tracking and authorising the location and movement of all gaming machines;
 - (b) ensuring venues use approved gaming machines only;
 - (c) ensuring the correct functioning of gaming machines;
 - (d) calculating taxes payable by venues, or providing relevant data to the State for the State to calculate the taxes payable by venues;
 - (e) accounting for payouts to players to ensure the minimum return to players or reporting on it;
 - (f) providing a terminal to the office of the State regulator with unlimited access to gaming machine databases; and
 - (g) maintaining an audit file which records all "raw" data received from gaming venues.
19. In Queensland, Monitors are also exclusively responsible for the repair and maintenance of gaming machines.
20. However, the particular services provided by a Monitor may differ as between each Australian State and Territory because there are different compliance and regulatory requirements.

The licensing regime and suppliers of monitoring services

21. The licensing regime which regulates the supply of monitoring services and gaming systems and related services varies between each State and Territory. At a broad level:
- (a) in Western Australia and the Australian Capital Territory, the Gaming and Wagering Commission (WA) and the ACT Gambling and Racing Commission, respectively, are solely responsible for gaming machine monitoring;
 - (b) in each of New South Wales, Victoria, South Australia and Tasmania, only one (exclusive) license to supply monitoring services has been granted by the relevant licensing authority for each State;
 - (c) in the Northern Territory, there is no restriction on the number of entities that can hold a monitoring license; and
 - (d) in Queensland, there is no restriction on the number of entities that can hold a monitoring license.
22. A description of the licensing regime which applies as well as the suppliers of monitoring services in each jurisdiction is set out below. In the following paragraphs, I set out an overview of the licensing regime which applies in each jurisdiction.

New South Wales

23. In New South Wales, it is a requirement for an entity wanting to provide monitoring services to hold a monitoring license.
24. The exclusive monitoring license for New South Wales is currently held by Tatts' subsidiary Maxgaming NSW Pty Limited (**Maxgaming NSW**), until 30 November 2017. Maxgaming NSW has been granted a further exclusive license for the period 1 December 2017 to 30 November 2032. The license authorises Maxgaming NSW to operate the CMS which monitors gaming machines throughout New South Wales. Maxgaming NSW currently monitors approximately 95,000 gaming machines in licensed clubs and hotels in New South Wales.
25. I understand that the Monitor in New South Wales is subject to strict regulatory obligations in relation to the use of CMS data for any business purpose other than the performance of its monitoring functions (under section s136B and 139 of the *Gaming Machines Act 2001* (NSW)). These obligations are reflected in Maxgaming NSW's monitoring license.
26. I understand that in the next 2-3 years, the regulatory regime in New South Wales will change to allow gaming venues to choose between three different operating systems to connect to their gaming machines to the CMS:
- (a) X-Series - the current New South Wales protocol and functional interface for gaming machines;
 - (b) QCom - the protocol and interface used in all other Australian jurisdictions; and
 - (c) G2S - an internationally developed protocol and interface.
27. Under the proposed new regulatory regime and Maxgaming NSW's new license, I understand that Maxgaming NSW will be **[Confidential to Tatts]** [REDACTED]

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Queensland

28. In Queensland, it is a requirement for an entity wanting to provide:
 - (a) monitoring services to hold a monitoring operator's license; and
 - (b) gaming machine repairs and maintenance services to hold a repairs and maintenance license.
29. Maintenance services or modifications to gaming machines must be made by a Monitor, or a service supplier on behalf of a Monitor (under the *Gaming Machine Act 1991* (Qld), section 231). However, gaming systems can be supplied by parties other than a Monitor.
30. Monitoring licenses are usually issued for a term of 10 years in Queensland and are renewable on application.
31. Intecq Limited (**Intecq**) and Maxgaming QLD Pty Limited (**Maxgaming QLD**) are currently, to my knowledge, the main suppliers of monitoring services in Queensland. Intecq delivers systems and services including an approved monitoring system which meets industry compliance requirements in Queensland through its business unit "Odyssey". I am aware that Intecq was recently acquired by Tabcorp.
32. Maxgaming monitors approximately 80% (approximately 34,000) of the gaming machines in licensed clubs and hotels in Queensland. Intecq monitors the remainder.
33. Below, I deal with the fact that two additional companies have been issued monitoring licenses in Queensland and I believe these companies are preparing to offer monitoring services in Queensland.

Northern Territory

34. In the Northern Territory, it is a requirement for an entity wanting to provide monitoring services to hold a monitoring license.
35. UBET NT Pty Limited (**UBET NT**) holds a license to provide monitoring services in the Northern Territory and currently monitors approximately 1,300 gaming machines. UBET NT's license is due to expire in **[Confidential to Tatts]** 2021. Monitoring licenses are usually issued for a term of 5 years and can be renewed on application.
36. UBET NT is the only Monitor in the Northern Territory. However, UBET NT does not hold an exclusive license. That UBET NT is the only Monitor reflects that the Northern Territory is a small market (holding less than 1% of the total number of gaming machines in Australia in 2016). Further, the cost of operating a gaming machine monitoring business in the Northern Territory is also higher than the cost of running the same business in the eastern States of Australia, given the relatively large distances between customers in the Northern Territory.

Victoria

37. In Victoria, it is a requirement for an entity wanting to provide monitoring services to hold a monitoring license.
38. In Victoria, a Monitor is not permitted to provide gaming systems, other than pre-commitment services (Schedule 1 of the *Gambling Regulation Act 2003* (VIC)) and section 3.4.4 of *Gambling Regulation Act 2003* (VIC)).
39. In Victoria, monitoring services to venues are supplied exclusively by Intralot Gaming Services Pty Ltd (**IGS**) under a license issued by the Victorian government which expires in 2027. As noted below in paragraph 69, I am aware that in 2016 Tatts announced that it was in

discussions to acquire IGS from IGS' parent company, Intralot SA (**Intralot**). I understand that Intralot is a global gaming company with a strong presence in Australia and New Zealand. Intralot is a supplier of gaming machines and gaming systems and related services, including repair and maintenance and support services.

South Australia

40. In South Australia, it is a requirement for an entity wanting to provide monitoring services to hold a monitoring license.

Tasmania

41. In Tasmania, it is a requirement for an entity wanting to provide monitoring services to hold a monitoring license.

Australian Capital Territory

42. In the Australian Capital Territory, the ACT Gambling and Racing Commission is solely responsible for providing monitoring services.

Western Australia

43. In Western Australia, the Gaming and Wagering Commission (WA) is solely responsible for providing gaming machine monitoring services and does so for Perth's Crown Casino. Hence, Crown Casino in Perth does not acquire monitoring services from any other supplier.

SECTION C: GAMING SYSTEMS AND RELATED SERVICES

An overview

44. Gaming systems, including player loyalty schemes and related services such as linked jackpots, are comprised of software and hardware designed to allow licensed venues to manage and enhance their operation of gaming machines. The software and hardware which venue customers demand can vary significantly depending on the supplier's and customer's infrastructure and the terms of individual contracts.
45. By way of example, in Queensland, a Monitor can hold an individual gaming machine for a player who has reserved that gaming machine through a feature which Maxgaming calls "Ezy Break", which disables an individual gaming machine at a venue through the venue's site controller.
46. At a general level, however, gaming systems, including player loyalty schemes, are broadly designed to track, report on and allow for financial reconciliation of gaming machine activity. In addition, such systems can include:
- (a) software and hardware for producing and reading venue membership cards for players, and for tracking and reporting on player activity facilitated by membership cards;
 - (b) software which facilitates player loyalty programs and venue loyalty programs;
 - (c) linked jackpots;
 - (d) software allowing venues to market to, and communicate with, customers;

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- (e) cashless gaming solutions, including:
 - (i) Ticket In / Ticket Out (**TITO**) systems, which allow patrons, once they have finished playing a particular gaming machine, to print a ticket at the gaming machine and either use that ticket at another gaming machine or redeem it for cash at a venue cashier or automated kiosk; and
 - (ii) card-based gaming systems – where cash is transferred to, and redeemable from, a plastic card or token;
 - (f) player kiosks, at which players may check their loyalty status or redeem winnings stored on a TITO ticket or cashless gaming card;
 - (g) voluntary pre-commitment systems (although these can also be provided separately from an in-venue gaming system or loyalty program).
47. Gaming systems may be supplied to particular venue customers with related services, such as:
- (a) financing of gaming machine operations;
 - (b) business intelligence software, which facilitates reporting and analysis of gaming machine activity, often as benchmarked against other venues;
 - (c) repair, maintenance and support services in relation to gaming hardware and software; and
 - (d) business consultancy services, including the provision of advice in relation to training and regulation.
48. Ultimately, the scope of these services will vary significantly depending on the supplier's and customer's infrastructure and the terms of the individual contracts.
49. Customers of gaming systems and related service providers include:
- (a) clubs, hotels and casinos (depending on the State or Territory) which operate gaming machines;
 - (b) groups such as the ALH and Spirit Hotels that own clubs and hotels which own and/or operate gaming machines;
 - (c) Australia's State and Territory gaming regulators (described in paragraph 17) that impose a license fee on repair and maintenance suppliers and testers for the provision of repair and maintenance licenses and testing services.
50. In my experience, groups of venues and large venues often tend to purchase gaming systems and related services as a bundle, whereas small individual venues tend only to purchase monitoring services.

The supply of gaming systems and related services

51. In my view, the supply of gaming systems and related services in each Australian State and Territory is highly competitive. There is a large number of specialist domestic businesses as well as large international gaming services companies supplying gaming systems and related services.
52. The services offered by these suppliers can vary significantly and are primarily dictated by the supplier's differing infrastructure capabilities.

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53. To my knowledge, currently the main suppliers of gaming systems and related services in Australia generally include:
- (a) Tatts' subsidiaries Maxgaming QLD, Maxgaming NSW, Maxgaming VIC Pty Ltd, UBET NT, and Bytecrafter;
 - (b) **Intecq** (discussed below at paragraph 78 and following);
 - (c) **Tabcorp Gaming Solutions Pty Ltd (TGS)** (discussed below at paragraph 70 and following);
 - (d) **Aristocrat Leisure Limited (Aristocrat)**: Aristocrat is a global gaming company based in Australia, and listed on the ASX. Its core business is the manufacture and supply of gaming machines. Aristocrat supplies gaming systems and related services to venues in Australia;
 - (e) **Scientific Games Corporation (SGC)**: SGC is a global gaming company based in the US. One of the core businesses of SGC is the manufacture and supply of gaming machines. SGC provides gaming systems and related services to venues in Australia. SGC is the exclusive supplier to ALH, which owns and operates licensed venues across Australia;
 - (f) **Konami Holdings Corporation (Konami)**: Konami is a global entertainment company headquartered in Japan, and is listed on the Tokyo and London Stock Exchanges. Konami's gaming and systems business has operations in Australia, New Zealand, the US, Canada, South Africa and Singapore. Konami provides gaming systems and related services in Australia;
 - (g) **IGS**: is a global gaming company with a strong presence in Australia and New Zealand. It is a supplier of gaming machines, gaming systems as well as gaming machine maintenance and support services;
 - (h) **Global Gaming**: is an Australian supplier of gaming systems and related services. It supplies such services in New South Wales. Its systems are called "Central Credit Unit", and "Global Eye", which have functions including financial reporting and reconciliation. It's "Max©tag" system has player tracking and management, player loyalty programs, and voluntary pre-commitment functions, operating through a scannable plastic tag (rather than a traditional membership/loyalty card). Global Gaming also provides player kiosks, TITO systems, as well as a simpler "Ticket Out" cashless payment system. Global Gaming has been acquired by Banktech, the parent company of Utopia (referred to further in paragraph 117 and following below);
 - (i) **Other suppliers**: There are a large number of other suppliers of gaming systems and related services, including PVS Australia Pty Ltd (**PVS**), Amtek Corporation Pty Ltd (**Amtek**), Mercury Group of Companies Pty Ltd (**Mercury**), Momentum Gaming Australia Pty Ltd (**Momentum**), Specialist Gaming Services Pty Ltd (**SGS**), Token Business Solutions Pty Ltd and Frontier Hospitality.
54. New South Wales, Queensland and Victoria represent the largest geographical regions for gaming systems and related services, comprising over 150,000 of the approximately 185,000 gaming machines in Australia (over 80% of the total). For this reason, New South Wales, Queensland and Victoria also attract a larger number of suppliers of gaming systems and related services.

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Tatts

55. Tatts' gaming systems and related services are supplied by Maxgaming under the brand "MAX" and Tatts' gaming machine repair and maintenance services are supplied by Bytecraft, under the brand "MAX Tech".

Maxgaming - monitoring and gaming systems

56. Maxgaming operates in Queensland, New South Wales, Victoria and the Northern Territory. While its core business is the supply of monitoring services for gaming machines in Queensland, the Northern Territory and New South Wales, Maxgaming also supplies gaming systems and related services to its customers in these States and Territory, such as:
- (a) the "Wildcat" system, which has financial reporting and reconciliation functions;
 - (b) the "Cougar" system, which has player tracking and player loyalty functions (Maxgaming currently provides loyalty programs to 350 venues in Australia);
 - (c) cashless gaming solutions, including a TITO product "my ticket", and a plastic card solution which has pre-commitment functionality (Queensland only);
 - (d) the "MAXReports" business intelligence program;
 - (e) kiosks and cashier redemption equipment; and
 - (f) an in-venue or multi-venue, "fraternal" or state-wide linked jackpot service in Northern Territory and Queensland; and in NSW, a multi-venue, "fraternal" or state-wide linked jackpot, pursuant to an exclusive license.
57. A jackpot is provided by a "triggering mechanism" in a gaming machine, which is either a random number generator or a gaming machine game feature. The jackpot is displayed and marketed as a "jackpot theme". The jackpot pool (particularly across venues) must be maintained and dispersed to players when jackpots trigger or when jackpots are decommissioned.
58. There are three broad types of jackpots:
- (a) first, a jackpot on/in an individual gaming machine (which Maxgaming does not supply);
 - (b) second, a multi-venue, "fraternal" or state-wide linked jackpot service linked across a number of venues and gaming machines in a State; and
 - (c) third, in-venue jackpots linked across a number of gaming machines in a venue.
59. In New South Wales, Maxgaming supplies a loyalty-based gaming system to only one "pilot" site accounting for 30 gaming machines of the State's total number of over 90,000 gaming machines. The purpose of the pilot program was as a "proof of concept" installation to ascertain whether Maxgaming's loyalty system, currently operating in Victoria, could be implemented in New South Wales without significant change. However, Maxgaming does not have a plan to expand the pilot program or the provision of loyalty services in New South Wales.

Bytecraft - repair and maintenance services

60. Bytecraft provides repair and maintenance services to gaming venues in all States and Territories of Australia (except the Australian Capital Territory and Tasmania). In particular, it provides on-site maintenance, workshop repair, warehousing and distribution and help-desk services.

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Bundling of services

61. As already noted, Maxgaming offers its customers a number of services. These services include the supply of monitoring services and gaming systems and related services.
62. Maxgaming may offer products and services separately. However, some of Maxgaming's customers acquire more than one service from Maxgaming as a bundle.
63. Where Maxgaming and/or Bytecraft offers bundled service offerings, **[Confidential to Tatts]**
[REDACTED]
64. Factors which are relevant to Tatts' price offering to customers include:
- (a) **[Confidential to Tatts]** [REDACTED]
 - (b) **[Confidential to Tatts]** [REDACTED]
 - (c) **[Confidential to Tatts]** [REDACTED] and
 - (d) **[Confidential to Tatts]** [REDACTED]
65. **[Confidential to Tatts]** [REDACTED]
66. The products and services offered by Maxgaming and/or Bytecraft vary depending on the customer's choice and infrastructure and the terms of the customer's individual contracts.
67. In Queensland, all Maxgaming's customers which acquire monitoring services from Maxgaming also choose to acquire repair and maintenance services from Bytecraft. This is because, as noted in paragraph 29, in Queensland only a Monitor can provide repair and maintenance services. **[Confidential to Tatts]**
[REDACTED]
68. In my experience, while Maxgaming does offer bundled service solutions including both monitoring and a promotional or loyalty product or service, it is common for customers to only acquire one of these services from Maxgaming and other gaming systems and related services from someone else. For example, in New South Wales, where Maxgaming is the sole supplier of monitoring services, most of Maxgaming's monitoring customers acquire other gaming systems and related services from third party suppliers.
69. I am aware that Tatts recently disclosed that it is considering the acquisition of IGS, which has a 15-year exclusive license to provide monitoring and pre-commitment services for all hotel and club gaming machines in Victoria. I attach to this statement a copy of a press release issued by Tatts dated 3 August 2016 **Tab 2 of Exhibit FM-1 [TAT.001.028.0020]**. This document sets out some information related to this potential acquisition. In this document, Tatts confirmed that it had been in discussions with IGS in relation to a potential acquisition by Tatts of IGS's Australian and New Zealand business. Tatts' discussions with IGS' parent company, Intralot, have continued however as at the date of this statement, no binding agreement has been reached.

Tabcorp

TGS

70. TGS provides a service offering for gaming systems to gaming machine venues in Victoria and New South Wales. To my knowledge, TGS does not offer or provide gaming monitoring services. TGS's service offering also includes:
- (a) **gaming machine financing:** which involves purchasing existing gaming machines from venues and leasing gaming machines to these venues for a daily fee;
 - (b) **repair and maintenance:** TGS provides servicing, repair and maintenance of venues' gaming machines; and
 - (c) **consultancy services:** TGS supplies related services and advice to venues, such as training and advice with respect to venue refurbishment, financing, marketing, and regulations compliance.
71. TGS does not manufacture or supply its own gaming systems. Rather, it re-supplies third party gaming systems.
72. TGS only supplies its repair and maintenance services for the gaming machines it leases, together with a bundle of other TGS-supplied products and services, for example, TGS's re-supplied player loyalty systems. I understand it is a "hard" bundle; that is, it is indivisible for TGS customers. TGS, to my knowledge, does not provide repair and maintenance services to third party-supplied gaming systems.
73. In New South Wales and Victoria, Bytecraft and TGS do not directly compete for the same customers to supply repair and maintenance services. This is because, to my knowledge, TGS does not provide repair and maintenance services to third party-supplied gaming machines or third party-supplied gaming systems outside of a bundle of TGS services.
74. By way of example, in relation to some recent competitive tenders in which Bytecraft took part in Victoria:
- (a) **[Confidential to Tatts]** [REDACTED]
 - (b) **[Confidential to Tatts]** [REDACTED]
 - (c) **[Confidential to Tatts]** [REDACTED]
75. **[Confidential to Tatts]** [REDACTED]
76. For these reasons, in Victoria and New South Wales, I consider that Maxgaming and TGS compete to only a limited extent in the supply of gaming systems and related services.
77. As far as I am aware, TGS has not sought to compete outside New South Wales and Victoria in relation to the supply of those services and I do not regard it as a competitor in the supply of gaming systems and related services in any State or Territory outside New South Wales and Victoria.

Intecq

78. Intecq provides monitoring services for gaming machines in Queensland as well as gaming systems and related services in New South Wales, Victoria and Queensland (although not all

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the same services are provided across each of these States). Some of Intecq's services include:

- (a) financial reporting and reconciliation;
- (b) player tracking and management;
- (c) player loyalty programs; and
- (d) voluntary pre-commitment.

79. Intecq also provides a number of other related services including:

- (a) **payment solutions:** Intecq's two TITO systems (one paper-based, the other card-based);
- (b) **player marketing and communications:** this allows the venue to communicate with customers through a gaming machine;
- (c) **bonus points:** services which allow customers to earn non-cash redeemable bonus points through using a gaming machine;
- (d) **venue loyalty programs:** Intecq supplies a range of customer and venue loyalty programs to licensed venues in Queensland;
- (e) **business intelligence services:** this includes using data analytics to provide venues with data regarding gaming machine use, financial performance, membership, loyalty and promotions; and
- (f) **hardware:** including the provision of kiosks, computers and other associated hardware.

80. I regard Intecq as a competitor of Maxgaming in Victoria in the supply of gaming systems and related services. However, I understand that in Victoria Intecq only supplies repair and maintenance services for the gaming systems it re-supplies and does not supply repair and maintenance services for gaming machines.

81. I regard Intecq as a competitor of Maxgaming in Queensland in the supply of monitoring services (which Intecq supplies through its business unit called "Odyssey"), and gaming systems and related services. I understand that Intecq only provides repair and maintenance services for the gaming systems it re-supplies. As a Monitor, Intecq provides repair and maintenance services for the gaming machines which it monitors in Queensland.

82. In New South Wales, I consider that Maxgaming and Intecq compete to only a limited extent in the supply of gaming systems and related services, because in New South Wales:

- (a) Maxgaming supplies monitoring services, but Intecq does not;
- (b) Maxgaming only supplies a multi-venue, "fraternal" or state-wide linked jackpot pursuant to an exclusive license, and I am not aware of Intecq supplying any jackpot services;
- (c) Maxgaming supplies a loyalty-based gaming system to only one pilot site in New South Wales, and does not proactively market gaming systems to customers;
- (d) Maxgaming and (to my knowledge) Intecq have only very small market positions in the supply of repair and maintenance services, and I understand that Intecq only

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provides repair and maintenance services for the gaming systems which it re-supplies.

SECTION D - EXTENT OF COMPETITION FACED BY MAXGAMING

Extent of existing competition between Maxgaming/Bytecrafft and TGS/Intecq

83. Based on my knowledge of the monitoring and gaming systems and related services currently supplied by Maxgaming and TGS/Intecq, these entities compete against each other in respect of:
- (a) the supply of gaming systems and related services in:
 - (i) New South Wales;
 - (ii) Victoria; and
 - (iii) Queensland;
 - (b) the supply of monitoring services in Queensland.
84. I am not aware of any other area of competition between Maxgaming and TGS/Intecq.

Gaming systems and related services in relevant States

85. The supply of gaming systems and related services in:
- (a) New South Wales,
 - (b) Victoria; and
 - (c) Queensland
- has attracted a number of competitors in addition to Maxgaming and Intecq.
86. To my knowledge, there are at least a dozen suppliers of gaming systems and related services (including repair and maintenance of gaming systems and gaming machines) active in New South and Victoria; and at least six suppliers of these services active in Queensland.
87. The supply of gaming systems and related services can be characterised by the following features, which I describe by State, and where appropriate market segment, in the following paragraphs.
88. I am aware that gaming systems and related services contracts in each of New South Wales, Queensland and Victoria may run on a month to month basis and, in my experience, fixed term contracts for the supply of gaming systems and related services tend to be limited to a maximum of five years.
89. In repair and maintenance, in New South Wales and Victoria, due to there being more than a dozen suppliers of these services in each State, venues tend to change suppliers regularly.
90. In both New South Wales and Victoria, there are few costs for venue customers to switch repair and maintenance suppliers. This is because the majority of repair and maintenance suppliers in those States are able to service a number of different types of gaming machines, gaming systems and venue customers using standard equipment, training and industry knowledge. There are also very few regulatory requirements or costs for repair and maintenance suppliers to operate in each of New South Wales and Victoria, other than obtaining approval to operate by the relevant State regulator. As a result, in both New South

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Wales and Victoria, repair and maintenance suppliers are broadly interchangeable for venue customers.

91. The position is different in Queensland. In Queensland, because of the regulatory requirements referred to in paragraph 67, only the Monitor which provides a venue customer's monitoring services can provide repair and maintenance services to that customer. While manufacturers of gaming systems active in Queensland may perform software updates to their own gaming systems, Monitors must perform the installation, repair and maintenance of gaming machine hardware and gaming system hardware in venues in Queensland.
92. To my knowledge, Bytecraft and Maxgaming have not in practice imposed contract termination fees on customers of repair and maintenance services in New South Wales, Queensland or Victoria.
93. In my experience, the reasons why venue customers switch between suppliers of repair and maintenance services include factors such as better prices and offers of discounts. In addition, quality of service tends to be the most important factor for many venue customers, in my experience.
94. Venue customers are able to switch between suppliers of gaming systems.
95. In Queensland, it is not costly for customers to switch suppliers. It would typically cost up to \$150 per gaming machine to switch suppliers, which is the cost for reconnecting the customer's gaming machines and installing the supplier's hardware on each gaming machine.
96. These costs in Queensland are typically covered in whole or in part by the incoming supplier on the basis the supplier is awarded a contract for a period of between three and five years, being a sufficient period within which to cover those upfront costs.
97. It is not possible for me to estimate the costs of switching for a particular venue with precision. However, the costs of switching are higher in New South Wales and relatively lower in Queensland and Victoria. This is because the Queensland and Victorian regulatory regimes require venues to use some common or standard gaming infrastructure, which is not the case in New South Wales.
98. In Queensland, the gaming system provider is able to use existing infrastructure in the venue, because in Queensland the LAN is owned by the venue customer. The venue customer, in practice, allows both the Monitor and a gaming system supplier (if it is not the venue customer's Monitor) to use the infrastructure. The regulatory regime in Queensland also stipulates that a common technology for data communication (called the QCom protocol) and the Monitor's interface must be used for any functions which could impact the performance of the gaming machine, even if those functions are part of a third party's gaming system (for example, TITO functionality, the transferring of cash or credits, or disabling a gaming machine).
99. In New South Wales, I estimate that it would typically cost more per gaming machine for a venue customer to switch gaming system and supplier than it would in Queensland, but the actual cost depends on the nature of the third party gaming system to which the venue customer would switch. I cannot estimate with any precision the switching cost in New South Wales on a per gaming machine basis.
100. The likely higher per gaming machine cost in New South Wales is because there is less common infrastructure used in New South Wales and gaming systems are not connected to the Monitor's hardware in the same way as in Queensland. This tends to create some additional technical complexity at the point of switching, and may result in increased installation work, transaction costs and downtime for the venue customer's business.
101. In New South Wales, it is common that a new supplier supply a wholly new gaming system at the point at which the venue switches. At that point, as well as the costs of the wholly new

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system, and because there is less common infrastructure in-venue, the venue customer could need to acquire new and additional cables, system hardware and human interfaces (e.g. a new personal computer to control the system) and pay for the new supplier to install and maintain a new LAN.

102. In Victoria, the situation is more similar to New South Wales than Queensland. This is because, as in New South Wales, the venue may not own the LAN. In addition, in Victoria, IGS's monitoring system requires a physical connection to every gaming machine in a venue, which can mean more cabling and additional hardware costs at the point a customer decides to switch.
103. In each State, there are additional switching costs for customers related to staff training for new systems and services, but these costs are hard to quantify. While I do believe that venue customers experience some inconvenience in re-training staff to learn new gaming systems, it is not possible for me to estimate the financial cost of doing so.
104. In my experience, the reasons why customers switch between suppliers of gaming systems include factors such as better prices, offers of discounts, an ability to take advantage of technological developments and enhanced functionality delivered by a new system or to replace a legacy system upon the expiration of their services contract.

Monitoring services in Queensland

105. The supply of monitoring services in Queensland can be characterised by the following features.
106. The number of gaming machines in Queensland (approximately 44,000), is second only to the number of gaming machines in New South Wales.
107. There is no limit to the number of monitoring licenses which the Queensland regulator may issue and it would not be difficult for a market player or operator in an adjacent or related market to obtain a license as explained below (provided that a venue operator or a gaming machine manufacturer may not obtain a license).
108. An applicant for a monitoring license must pay an application fee of \$16,540 and must address the following matters:
 - (a) the applicant's business reputation;
 - (b) the applicant's current financial position and financial background;
 - (c) for the secretary and each executive officer – the person's character, and their current financial position and financial background;
 - (d) the applicant's general suitability to hold a license;
 - (e) whether the applicant has, or has arranged, a satisfactory ownership, trust or corporate structure;
 - (f) whether the applicant has, or is able to obtain, enough financial resources to ensure the financial viability of operations conducted under the license;
 - (g) whether the applicant has, or is able to obtain, the services of persons with appropriate business ability, knowledge or experience to enable the applicant to successfully conduct operations under the license;

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- (h) if the involved body has a business association with another entity – the entity's character or business reputation, and the entity's current financial position and financial background.
109. An applicant successful in applying for a license must pay a license fee of \$396,800. As mentioned in paragraph 30, monitoring licenses are issued for a 10-year term in Queensland.
110. A party seeking to reapply for a license must pay an application fee of \$16,540 and a license fee of \$396,800 and must also address each of the matters above.
111. The terms of monitoring services agreements between a Monitor and customers can vary greatly in length. In my experience, such agreements can vary in length from month-to-month arrangements to terms of up to five years. I am aware of Maxgaming having entered into monitoring services agreements with different customers for differing terms.
112. It is not unusual for customers in Queensland to switch between the suppliers of monitoring services. In Queensland, it is not costly for customers to switch monitoring suppliers.
113. The regulatory regime in Queensland stipulates that all venues and Monitors must use the QCom protocol, as mentioned at paragraph 98. In addition, both Maxgaming and Intecq use some common or standard gaming monitoring infrastructure in venues in Queensland. This means that, for a venue customer, the changeover to a new supplier of monitoring services is not technically complex, does not require substantial installation work, and very little downtime is experienced by most of Maxgaming's customers at the point of transfer. Installation tends to occur reasonably quickly for most venues (within a working day in the majority of venues).
114. There are additional switching costs for customers related to staff training for new systems and services, but these costs are hard to quantify. While I do believe that venue customers experience some inconvenience in re-training staff to learn new gaming monitoring systems, it is not possible for me to estimate the financial cost of doing so.
115. In the last three years, Maxgaming has gained both new customers and regained former customers which have returned to Maxgaming from Intecq. I do not maintain comprehensive records of instances of customers switching away from Maxgaming to Intecq in Queensland. However, as an example, [Confidential to Tatts] [REDACTED] recently switched to Intecq and then back to Maxgaming, within an 18-month period.
116. The reasons which I have been given by customers in Queensland as to why they decided to switch monitoring suppliers include better prices, discounts, a desire to take advantage of technological developments and enhanced functionality delivered by a new system or to replace a legacy system upon the expiration of their monitoring services contract.
117. I anticipate one or two new entrants will commence to offer and supply monitoring services in Queensland in the short to medium term. It is a matter of public record that licenses to supply monitoring services in Queensland were issued to PVS and Banktech/Utopia by the State regulator in or about 2015 and 2016. I attach to this statement a copy of an extract from the Queensland regulator's website, which lists both PVS and Utopia as licensed Monitors in Queensland (please see **Tab 3 of Exhibit FM-1 [TAT.001.028.0021]**). I believe that having paid the license fee to which I refer in paragraph 109, both PVS and Banktech/Utopia will be incentivised to commence operations in Queensland.
118. In that regard, I am aware that both PVS and Banktech/Utopia have to date promoted their respective services at trade shows in Queensland and New South Wales as well as on their respective websites. I am aware that these companies have contacted venue customers.
119. PVS, to my knowledge, supplies gaming systems and related services in Victoria and South Australia. These are closely related market segments to gaming monitoring services. They have the same or similar types of customers to gaming monitoring services, as noted at paragraphs 17 and 49.

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120. Utopia is owned by Banktech, which to my knowledge has experience in the provision of ATM, EFTPOS and other payment systems to a range of industries including hospitality. I expect that Utopia has the capability to supply monitoring services in Queensland. This is because I would expect Utopia, through its parent company Banktech, to have customer relationships for ATM services with relevant outlets operating gaming machines in Queensland.

121. In 2015, shortly after Banktech/Utopia was awarded its license to operate a monitoring business in Queensland, I reported to Tatts' executive team in the document which I attach to this statement at **Tab 1 of Confidential Exhibit FM-2 [TAT.001.002.1582] [Confidential to Tatts]**:



122. To my knowledge, Utopia has in-venue infrastructure which has been both tested and approved for use in Queensland, as well as technicians to service hardware and software supplied to venues. Further, a related body corporate to Utopia is Global Gaming (which is described in paragraph 53(h)) and which, I understand, supplies gaming systems and related services in New South Wales. Having regard to these matters, I consider that Utopia could provide an attractive offering to venues involving the supply of ATMs, gaming machine monitoring services, and gaming systems and services.

Pricing

Monitoring

123. Maxgaming NSW's supply of monitoring services in New South Wales is subject to a price determination. That determination, made by the Minister for Racing pursuant to the *Gaming Machines Act 2001* (NSW), provides that Maxgaming may charge no more than \$43.20 (plus GST) per gaming machine per month from 1 December 2016. From 1 July 2017 (and 1 July in each subsequent year in which the price determination is in place), I understand that the monitoring charge will increase/decrease according to the New South Wales consumer price index. A copy of this price determination is provided at **Tab 4 of Exhibit FM-1 [TAT.001.028.0027]**.

124. In Queensland, Maxgaming currently offers monitoring services at **[Confidential to Tatts]** per gaming machine per month.

Repair and maintenance

125. Maxgaming and Bytecraft relevantly supply repair and maintenance services in New South Wales, Queensland and Victoria at the following approximate price levels, subject to the factors identified at paragraph 64 above:

- (a) New South Wales: **[Confidential to Tatts]** per gaming machine per month;
- (b) Queensland: **[Confidential to Tatts]** per gaming machine per month;
- (c) Victoria: **[Confidential to Tatts]** per gaming machine per month.

126. In Queensland, as only a Monitor may supply repair and maintenance services to venue customers, customers which acquire a monitoring service from Maxgaming in Queensland will also acquire repair and maintenance services from Maxgaming.

Other gaming systems and related services

127. For all other gaming systems and related services supplied by Tatts (through Maxgaming or Bytecraft) in New South Wales, Queensland and Victoria, Tatts utilises price lists as a starting point for pricing to customers. Copies of Maxgaming's and Bytecraft's current price lists are included at **Tab 2.1 to Tab 2.6 of Confidential Exhibit FM-2 [TAT.001.028.0030]**, **[TAT.001.028.0029]**, **[TAT.001.028.0028]**, **[TAT.001.028.0031]**, **[TAT.001.028.0025]**, **[TAT.001.028.0026]**.

Miscellaneous

128. Tables identifying the following information relevant to Tatts' gaming products and services were prepared by Clayton Utz, Tatts' solicitors, in conjunction with Anne Tucker, General Counsel and Company Secretary of Tatts, for the purpose of assisting Tabcorp to answer Questions 6 ("Suppliers"), 8 ("Customers"), 9 ("Market Concentration") and 17 ("Prices and Profit Margins") of the Form S for Tabcorp's Tribunal application:
- (a) the supply costs incurred by Tatts and a selection of the suppliers who provide those inputs required for Tatts to provide gaming systems and related services, respectively (**Tab 3.1 of Confidential Exhibit FM-2 [TAT.001.029.0001]**) and a non-confidential version is provided at **Tab 5.1 of Exhibit FM-1 [TAT.001.030.0121]**);
 - (b) the turnover figures and market shares of Tatts' gaming monitoring and gaming systems and related services, respectively for each State and Territory in which Tatts operates for the period of FY12 - FY16 (**Tab 3.2 of Confidential Exhibit FM-2 [TAT.001.029.0016]**) and a non-confidential version is provided at **Tab 5.2 of Exhibit FM-1 [TAT.001.030.0136]**); and
 - (c) a selection of the customers to whom Tatts supplies gaming systems and related services (**Tab 3.3 of Confidential Exhibit FM-2 [TAT.001.029.0005]**) and a non-confidential version is provided at **Tab 5.3 of Exhibit FM-1 [TAT.001.030.0125]**;
- (together, the **Gaming Tables**). I am informed by Anne Tucker and believe that the contents of the Gaming Tables are accurate.
129. Tatts' gaming services business does not have any joint ventures, alliances or similar arrangements which might be described as "cooperative agreements".

Dated 9 March 2017



Frank Makryllos