

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT of 2017

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

Tatts Group Limited (Intervener)



Statement of: **Robert Michael Sean Cooke**

Address: 87 Ipswich Road, Woolloongabba, Queensland

Occupation: Managing Director and Chief Executive Officer

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, ROBERT (ROBBIE) MICHAEL SEAN COOKE of 87 Ipswich Road, Woolloongabba, Queensland, Company Director, say:

1. I am the Managing Director, and Chief Executive Officer, of Tatts Group Limited (**Tatts**).
2. This statement is made in support of 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 RC-1" is a bundle of documents. Exhibited to me at the time of making this statement are two further bundles of documents marked "Confidential Exhibit RC-2" and "Highly Confidential Exhibit RC-3".
4. Where in this statement I refer to documents, I refer to them by reference to their tab number within Exhibit RC-1, Confidential Exhibit RC-2 or Highly Confidential Exhibit RC-3 (as the case may be) and their unique document number beginning with a "TAT" or "TBP" prefix. I have reviewed those documents prior to signing this statement.
5. Tatts claims confidentiality over Confidential Exhibit RC-2 and Highly Confidential Exhibit RC-3.
6. Subsidiaries of Tatts are party to a number of agreements which are relevant to the matters discussed in this statement (**Confidential Racing Agreements**). At present, I am not able to refer to, or disclose the contents of those agreements without the consent of the other parties.
7. My curriculum vitae is at **Tab 1 of Exhibit RC-1 [TAT.001.015.0946]**.
8. I have worked in the lotteries, gaming and wagering industries in this country for more than a decade:
  - (a) first as Head of Strategy and General Counsel at UNiTAB Limited (which is now part of Tatts) from November 1999 to December 2005; and
  - (b) now as Group CEO and Managing Director of Tatts since January 2013.
9. Over that time I have established detailed knowledge and expertise in relation to all aspects of the gaming, wagering and lotteries businesses which Tatts conducts, including knowledge of:
  - (a) the nature and terms of Tatts' and its competitors' wagering agreements and licences with State and Territory Governments and racing bodies in those States and Territories. I was involved, and continue to be involved, in the negotiation of many of Tatts' agreements and licences;
  - (b) the nature and amount of payments made by Tatts to Governments and racing bodies under the agreements and licences referred to in (a) (or under the legislation authorising such arrangements);

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- (c) the identity of Tatts' competitors;
  - (d) the nature and extent of competition between Tatts and its competitors; and
  - (e) developments affecting competition in the wagering industry.
10. The matters set out in this statement are based on my knowledge and experience of Tatts' operations, my participation in Tatts' Board Meetings, my involvement in setting and implementing Tatts' overall strategies and business plans, and my involvement in Tatts' business and the gambling industry for over a decade (as set out in paragraph 8 above). My direct reports include Tatts' Chief Operating Officer - Wagering (Barrie Fletton until November 2016, then Brendan Parnell), Chief Operating Officer - Gaming (Frank Makryllos) and Chief Operating Officer - Lotteries (Sue Van der Merwe). **Tab 1 of Confidential Exhibit RC-2 [TAT.001.015.0934]** shows the organisational structure of Tatts in a series of organisational charts.
11. Whilst Tatts' business comprises substantial wagering, gaming machine monitoring and repair operations and lotteries businesses, this statement is concerned principally with Tatts' wagering business. The statement is arranged by reference to the following subject matters:
- (a) Gambling activities in Australia;
  - (b) The nature of Tatts' business, including its wagering business;
  - (c) Tatts' commitment to responsible wagering;
  - (d) The licensing regimes governing wagering in Australian States and Territories;
  - (e) The wagering licences and agreements which Tatts and Tabcorp currently hold;
  - (f) The payments made by Tatts by way of licence fees, wagering taxes, product fees (including race field fees) and other industry support fees, to State and Territory Governments and industry racing bodies;
  - (g) The identity of Tatts' competitors in its wagering business and the nature of competition in that business;
  - (h) Significant trends in the wagering industry in Australia since 1999;
  - (i) The role of corporate bookmakers and the competition from corporate bookmakers affecting Tatts' wagering business;
  - (j) Steps taken by Tatts to respond to competition from corporate bookmakers;
  - (k) Benefits to the public which are considered to result from the proposed merger; and



- (l) Pooling services and bidding for wagering licences.

## Section A – Gambling activities in Australia

12. Tatts' business operates in the overall gambling sector in Australia. The Review of Illegal Offshore Wagering Report dated 18 December 2015 (**Illegal Wagering Report**) (**Tab 2 of Exhibit RC-1 [TAT.001.015.0192]**) prepared in response to the review announced by the Commonwealth Government in September 2015 (**Review**) describes (at page 38) gambling activities in Australia as comprising casinos, Electronic Gaming Machines (**EGMs**), keno outlets, lottery outlets, bookmakers, and the Totalisator Agency Boards (**TABs**) and their retail outlets. I agree with that general statement. I made a confidential submission for Tatts dated 15 November 2015 to the Review (**Tab 1 of Highly Confidential Exhibit RC-3 [TAT.001.015.0810]**). Tabcorp also made a submission to the Review (letter dated 16 November 2015 at **Tab 3 of Exhibit RC-1 [TAT.001.015.0146]**).
13. Based on data provided by the Australasian Gaming Council – Guide to Australia's Gambling Industries 2014 – 15, the Illegal Wagering Report (at page 38) recorded that in 2013 – 14 gambling activities in this country consisted of:
- (a) 13 casinos;
  - (b) 197,054 EGMs across 5,341 venues (estimated);
  - (c) 4,285 Keno outlets;
  - (d) over 4,000 lottery outlets;
  - (e) 463 bookmakers; and
  - (f) 4,535 TAB retail outlets.

That list does not expressly consider the extent of digital, comprising online and mobile device, gambling.

## Section B - The nature of Tatts' business, including its wagering business

14. Tatts is the product of a merger in 2006 between Tattersall's Limited (a lottery and gaming machine operator) and UNiTAB Limited (**UNiTAB**) (a wagering and gaming machine monitoring group which had acquired Government owned TABs from the Queensland, South Australian and Northern Territory Governments). Tatts subsequently acquired the Government owned TAB in Tasmania in 2012, the Government owned lotteries in New South Wales in 2010 and the rights as Master Agent to conduct the South Australian lotteries on behalf of the Lotteries Commission of South Australia in 2012.
15. A more detailed summary of key events in Tatts' history is as follows:

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- (a) in 1999 TAB Queensland Ltd (**TABQ**) was formed when the Queensland State Government privatised the Queensland TAB through an initial public offering listed on the ASX;
- (b) in 2000 TABQ acquired NT TAB when the Northern Territory Government privatised it;
- (c) in 2002 TABQ acquired SA TAB when the South Australian Government privatised it;
- (d) Also in 2002, TABQ changed its name to UNiTAB;
- (e) in 2004 UNiTAB acquired Maxgaming NSW;
- (f) in 2005 Tattersall's Ltd conducted an initial public offering on the ASX;
- (g) in 2005 Tattersall's Ltd acquired 100% ownership of Bytecraft;
- (h) in 2006 Tattersall's Ltd and UNiTAB merged under the Tattersalls brand;
- (i) in 2007 Tattersall's Ltd acquired Talarius (a UK based EGM operator) and Golden Casket (a Queensland based lotteries business) and changed its name to Tatts Group Limited;
- (j) in 2010 Tatts acquired NSW Lotteries;
- (k) in 2012 Tatts acquired Tote Tasmania;
- (l) in 2012 Tatts was appointed Master Agent to conduct the South Australian lotteries on behalf of the Lotteries Commission of South Australia;
- (m) in 2014 Tatts negotiated an agreement with the Queensland State Government to extend its Queensland sports wagering licence by 61 years to 2098, and to extend the retail exclusivity period for its race wagering and sports wagering licences by 30 years to 2044. This was announced in Tatts' ASX Announcement dated 27 June 2014 at **Tab 4 of Exhibit RC-1 [TAT.001.015.0455]** (the **Queensland ASX Announcement**); and
- (n) in 2015 Tatts was granted a new 20 year exclusive totalisator licence in the Northern Territory.

Those events (up to 2012) were referred to briefly in a two-page item entitled "Our History" (**Tab 5 of Exhibit RC-1 [TAT.001.015.0807]**) in the confidential "2014 Tatts Playbook" that was circulated to Tatts staff in December 2013.



16. Tatts is a global leader in the gaming, wagering and lotteries industries. In FY16 its revenue was \$2,928 million, its EBITDA was \$495 million and its EBIT was \$420 million. This was recorded in Tatts' FY16 Annual Report (**Tab 6 of Exhibit RC-1 [TAT.001.014.0638]**) at page 18. Tatts is a leading lotteries operator with annual revenue of AU\$2.14 billion (FY16), a major race wagering and sports betting operator with annual revenue of AUS\$609.9 million (FY16) and a major provider of gaming solutions with annual revenue of \$210.7 million (FY16). Those figures were recorded in Tatts' FY16 Annual Report at pages 22-23 for Tatts' lotteries business, 26-27 for Tatts' wagering business and 28-29 for Tatts' gaming solutions business. Tatts' half year results for FY17 were published on 16 February 2017 and included a media release (**Tab 7 of Exhibit RC-1 [TAT.001.015.0950]**), an investor presentation (**Tab 8 of Exhibit RC-1 [TAT.001.015.0959]**) and an interim financial report (**Tab 9 of Exhibit RC-1 [TAT.001.015.0978]**).
17. Tatts' gaming solutions business is conducted by Maxgaming NSW Pty Ltd, Maxgaming Qld Pty Ltd and Ubet NT Pty Ltd (which holds the monitoring operator's licence for historical reasons, despite being primarily a wagering business) in Queensland, New South Wales, Victoria and Northern Territory (**Maxgaming**). Its core business is the supply of monitoring services for EGMs in Queensland, the Northern Territory and New South Wales, where it provides the Government with meter information which is used to calculate the taxes due to the State from gaming. It also supplies gaming and promotional management systems and related services to gaming venues. In 2016 Maxgaming's licence to operate a Centralised Monitoring System (**CMS**) for EGMs in New South Wales was extended from 1 December 2016 to 30 November 2017 and Maxgaming was awarded a new licence to operate a CMS from 1 December 2017 to 30 November 2032. As at June 2015 the CMS connected to approximately 95,000 EGMs in around 2,700 venues across New South Wales. Bytecraft provides installation, warehousing, relocation, repair and maintenance of EGMs to venues throughout Australia. On 3 August 2016, Tatts announced that it had, for some time, been in discussions with Intralot SA (**Intralot**) in relation to a potential acquisition by Tatts of Intralot's Australian and New Zealand businesses. A copy of that announcement is at **Tab 10 of Exhibit RC-1 [TAT.001.021.0328]**. Intralot is a global gaming company with a strong presence in Australia and New Zealand. It is a supplier of EGMs, gaming and promotional management systems, and EGM maintenance and support services. In Victoria, monitoring services to venues are supplied exclusively by Intralot Gaming Services Pty Ltd (IGS), under a licence issued by the Victorian Government that expires in 2027. Tatts' discussions with Intralot have continued and, as at the date of this statement, no binding agreement has been reached.
18. In addition to its lotteries, wagering and gaming businesses, Tatts owns and operates RadioTAB, a radio station that offers a range of sports and racing coverage and is broadcast into Queensland, South Australia, the Northern Territory and Tasmania. RadioTAB is also available nationally online

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19. Tatts is a public company limited by shares and is listed on the Australian Stock Exchange (**ASX**). As at 1 February 2017 it was ranked by market capitalisation as the 59<sup>th</sup> largest company on the ASX. Its headquarters are in Brisbane.
20. Tatts has developed proprietary lottery and totalisator and fixed price betting technology systems. About 400 technology personnel based at its Brisbane headquarters work on its totalisator and fixed price betting systems and other gaming technologies. Tatts' ownership of proprietary wagering systems means that it has limited financial and technical dependence on third party providers. It operates lotteries in all States and Territories of Australia, except Western Australia, from its Brisbane headquarters. It conducts retail and on-course wagering operations in Queensland, Northern Territory, South Australia and Tasmania under the licences and agreements mentioned below. It also conducts call centre based and digital betting services that are accessible Australia-wide and internationally.
21. Tatts' wagering business is operated by
- (a) UBET Qld Limited (**UBET QLD**);
  - (b) UBET SA Pty Limited (**UBET SA**);
  - (c) UBET TAS Pty Limited (**UBET TAS**); and
  - (d) UBET NT Pty Limited (**UBET NT**).

Each of UBET SA, UBET TAS and UBET NT is a wholly-owned subsidiary of UBET QLD, which is wholly owned by Tatts. This corporate structure (at 30 June 2016) is reflected in pages 140 - 141 of Tatts' FY16 Annual Report (**Tab 6 of Exhibit RC-1 [TAT.001.014.0638] at [.0708]**).

22. At **Tab 2 of Highly Confidential Exhibit RC-3 [TAT.001.015.0849]** is a spreadsheet setting out Tatts' wagering turnover (i.e. total bets wagered) and revenue (i.e. gross profit to operator, that is turnover after deducting payments to successful wagerers) for each financial year from FY12 to FY16 (the **Wagering Turnover and Revenue Spreadsheet**). The Wagering Turnover and Revenue Spreadsheet divides the turnover by:
- (a) Tatts entity - "NT TAB" (that is, UBET NT), "SA TAB" (that is, UBET SA), "TABQ" (that is, UBET QLD) or "TAS TAB" (that is, UBET TAS);
  - (b) event type - racing or sports betting; and
  - (c) product type - totalisator ("pari-mutuel") or fixed price betting.

I am informed by Ms Anne Tucker, General Counsel and Company Secretary of Tatts, and believe that the Wagering Turnover and Revenue Spreadsheet was prepared based on Tatts' transaction logs and management accounts and accurately reflects those logs and accounts.



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The logs and accounts used in the preparation of the Wagering Turnover and Revenue Spreadsheet can, if necessary, be made available for inspection (subject to appropriate arrangements to protect the confidentiality of the information in the logs and accounts).

23. The Wagering Turnover and Revenue Spreadsheet shows that Tatts' Wagering Turnover and Revenue from FY12 to FY16 was as follows: **[HIGHLY Confidential to Tatts]**

Year	Turnover (total bets wagered)	Revenue (gross profit to operator, i.e. turnover after deducting payments to successful wagerers)
FY12	[REDACTED]	[REDACTED]
FY13	[REDACTED]	[REDACTED]
FY14	[REDACTED]	[REDACTED]
FY15	[REDACTED]	[REDACTED]
FY16	[REDACTED]	[REDACTED]

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24. The FY16 revenue figure in the table above (approximately **[HIGHLY Confidential to Tatts]** [REDACTED]) is different from the FY16 revenue figure of \$609.9 million referred to in paragraphs 16 and 125. This is because the \$609.9 million is the total revenue of the wagering division of Tatts' business (which includes amounts not directly from wagering, such as equipment rental fees that Tatts charges its retail agents and commission that Tatts earns from selling keno in its UBET agencies), whereas the **[HIGHLY Confidential to Tatts]** [REDACTED] is the portion of that amount that is attributable to actual wagering (i.e. wagering turnover minus payments to successful wagerers).

25. Within **Highly Confidential Exhibit RC-3** and **Exhibit RC-1** are tables identifying:
- (a) the key external inputs that enable Tatts' wagering business to operate (the **Inputs Table at Tab 3 of Highly Confidential Exhibit RC-3 [TAT.001.015.1014]** and **Tab 11 of Exhibit RC-1** (with confidential information redacted) **[TAT.001.030.0011]**) - for example:
    - (i) State and Territory Governments supply licence rights in exchange for fees and taxes paid by Tatts;

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- (ii) racing industry bodies and sporting bodies supply racing and sports "product" that enables Tatts to offer wagering on their events;
  - (iii) retail agents, hotels, pubs and clubs supply agency services to host Tatts retail wagering outlets; and
  - (iv) landlords lease premises to Tatts for the operation of retail wagering outlets;
- (b) a selection of the suppliers who provide those supplies (the **Suppliers Table** at **Tab 4 of Highly Confidential Exhibit RC-3 [TAT.001.015.1020]** and **Tab 12 of Exhibit RC-1** (with confidential information redacted) [TAT.001.030.0017]).

The Inputs Table and Suppliers Table were prepared by Clayton Utz, Tatts' solicitors, in conjunction with Ms Tucker, for the purpose of assisting Tabcorp to answer Question 6 ("Suppliers") of the Form S for its Tribunal application. I am informed by Ms Tucker and believe that the contents of the Inputs Table and the Suppliers Table are accurate.

26. Tatts' wagering business does not have any joint ventures, alliances or similar arrangements in relation to the provision of wagering services in Australia which might be described as "cooperative agreements". However, Tatts does have arrangements in place with various foreign totalisator operators (namely [Confidential to Tatts] [REDACTED] [REDACTED] to enable them to provide totalisator betting services to their customers under their local licences. The agreements are confidential and have various durations, up to [Confidential to Tatts] [REDACTED].
27. At **Tab 5 of Highly Confidential Exhibit RC-3 [TAT.001.015.1013]** is a copy of Tatts' FY2016 Profit and Loss Statement, which records that Tatts' wagering business incurred [Highly Confidential to Tatts] [REDACTED] in costs in FY2016, broken down as follows:
- (a) Total Statutory Outgoings - [HIGHLY Confidential to Tatts] [REDACTED];
  - (b) Employee Costs - [HIGHLY Confidential to Tatts] [REDACTED];
  - (c) Operating Fees and Direct Costs - [HIGHLY Confidential to Tatts] [REDACTED];
  - (d) Telecommunications and Technology - [HIGHLY Confidential to Tatts] [REDACTED];
  - (e) Marketing and Promotions - [HIGHLY Confidential to Tatts] [REDACTED];
  - (f) Information Services - [HIGHLY Confidential to Tatts] [REDACTED];
  - (g) Property Expenses - [HIGHLY Confidential to Tatts] [REDACTED];
  - (h) Other Expenses - [HIGHLY Confidential to Tatts] [REDACTED].



28. At **Tab 6** of **Highly Confidential Exhibit RC-3 [TAT.001.015.1003]** and **Tab 13** of **Exhibit RC-1** (with confidential information redacted) **[TAT.001.030.0001]** is a table identifying the customers of Tatts' wagering business (the **Customers Table**). The Customers Table was prepared by Clayton Utz in conjunction with Ms Tucker, for the purpose of assisting Tabcorp to answer Question 8 ("Customers") of the Form S for its Tribunal application. I am informed by Ms Tucker and believe that the contents of the Customers Table are accurate.
29. Totalisator (**pari-mutuel** or **tote**) wagering is distinct from fixed price wagering. Totalisator betting involves all wagers on a particular event (e.g. a horse race) that have the same bet type (e.g. a 'win' or 'place') being placed in a pool and winning punters sharing in the total pool, less a set percentage (subject to a ceiling fixed by the relevant State/Territory legislation) deducted as a commission by the operator of the totalisator (known as a 'take-out rate'). The wagering operator publishes indicative odds in the lead-up to the event, based on the betting activity on the event prior to its commencement. The final odds are not known when the bet is placed and are finalised when betting closes immediately before a race. The payout to a customer is based on the total bets in the pool, less the operator's take-out rate, divided by the number of winners. Tatts offers totalisator betting on thoroughbred racing, harness racing and greyhound racing. It also offers a totalisator product called footyTAB which allows punters to either "pick the score" or "pick the winner" on matches in the Australian National Rugby League (**NRL**).
30. In summary, the legislated maximum take-out rate that applies to Tatts as a totalisator operator is 25%. More specifically:
- (a) In Queensland, the *Wagering Act 1998* and *Wagering Regulation 1999* permit UBET QLD to deduct a totalisator commission in an amount of not more than 25%;
  - (b) In South Australia, the *Authorised Betting Operations Act 2000* and the Approved Licensing Agreement with the South Australian Government prevents UBET SA from deducting a totalisator commission in an amount more than 25%;
  - (c) In Tasmania, the Tasmanian Betting Rules authorised by the Department of Treasury and Finance permit UBET TAS to deduct a totalisator commission in an amount not more than 25%, except on international pooled bet totalisators, where the amount must not exceed 35%. At the time of this statement, Tatts has no international pooled bet totalisators so the 35% limit is irrelevant to Tatts;
  - (d) In the Northern Territory, the *Totalisator Licensing and Regulation (Wagering) Rules* permit UBET NT to deduct a totalisator commission in an amount of not more than 25%.
31. Below is a table setting out the average take-out rates achieved by Tatts from FY13 to FY16 (as recorded in a dashboard / business intelligence tool used by Tatts' wagering business) for the 15 main types of totalisator bet.





UBET Average Take out rates FY13 to FY16 by Product

Average take out rate  
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Bet Type	FY13	FY14	FY15	FY16
Win				
Place				
Win/Place				
All Up				
Any2				
Quinella				
Exacta				
Trifecta Quinella				
Trifecta				
First 4				
Double				
Extra Double				
Double Trio				
Treble				
Quadrella				

32. As shown in the above table, Tatts' average take-out rates have all [HIGHLY Confidential to Tatts] [REDACTED] between FY13 and FY16. [HIGHLY Confidential to Tatts] [REDACTED]  
[REDACTED]  
[REDACTED] The actual average take-out rates for Tatts' pools [HIGHLY Confidential to Tatts] [REDACTED].

33. Fixed price betting (also known as fixed odds betting) involves bets placed on an event (typically racing or sporting) where the payout for a winning bet is determined by the odds in place (as determined by the wagering operator) when the bet is made and does not change after that. Customers who bet on the same outcome at different times may not receive the same payout, as the wagering operator may have adjusted the odds over time, based on the amounts bet on each outcome. This is how wagering operators try to maintain a 'balanced book' that generates revenue for the operator regardless of the outcome of the event. Tatts offers fixed price betting on thoroughbred racing, harness racing, greyhound racing, a variety of sports (see paragraph 37) and occasionally other events such as reality television shows, the Oscars, Grammys, etc.).

34. Fixed price betting involves higher risk for the wagering operator, as its revenue is not based on a set commission or 'take-out rate' (as it is in totalisator betting), but rather depends on

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various factors including the outcome of the event, the bets that are placed, the management of the book of bets by adjusting odds prior to the event starting and the extent to which the operator has 'bet back' the risk by placing bets with other bookmakers to spread their risk.

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35. Tote betting involves pools into which the wagers are placed. Tatts operates the UBET pool, which transacted approximately \$1.76 billion in wagers in FY16. Tabcorp operates two other tote pools, the Super TAB and NSW TAB pools. Together the three pools comprise all the totalisator pools in Australia.
36. The UBET pool consists of pari-mutuel bets placed with Tatts through its website, its apps, from mobile devices or by telephone to its call centres from anywhere in Australia, or the world, together with pari-mutuel bets made in person at retail outlets where Tatts (through its subsidiaries) is licensed to conduct wagering (namely Queensland, South Australia, Tasmania and the Northern Territory). Tatts does not offer pooling services to Australian totalisator operators outside the Tatts Group of companies.
37. Retail outlets comprise agencies or branches, commonly called "The TAB" (or, more recently, "UBET", as Tatts rolls out its new UBET brand), together with Pub TABs (outlets in a hotel or pub), Club TABs (outlets within a licensed club), and self-service terminals within the aforementioned outlets (known as SSTs). Tatts offers both totalisator and fixed price wagering on horse, harness and greyhound racing and also fixed price and limited totalisator wagering on sporting and other events, at its retail outlets. At **Tab 14 of Exhibit RC-1 [TAT.001.015.0001]** is a schedule of wagering products offered by Tatts, Tabcorp and corporate bookmakers that was prepared by Herbert Smith Freehills (Tabcorp's lawyers) and given to expert economists to prepare a report in these Tribunal proceedings. I have read the schedule and believe it accurately records the wagering products offered by Tatts. Sports betting includes AFL, NRL, Rugby Union, Soccer, Tennis, Cricket, Baseball, Basketball and others. **Tab 15 of Exhibit RC-1 [TAT.001.015.0380], [TAT.001.015.0381], [TAT.001.015.0382], [TAT.001.015.0383] and [TAT.001.015.0384]** comprises screenshots of the sports betting listed on the websites of Sportsbet, Ladbrokes, Tatts (being Tatts.com and UBET.com) and Tabcorp (being Tab.com.au). Whilst the sports bets offered by each organisation are not identical, there is a very substantial overlap.
38. With the exception of "in-play betting", which is betting after a sporting event has begun (see paragraphs 55-57), and which can only be conducted by a punter placing a bet at a retail outlet or by telephone, all of the wagering available at a Tatts retail outlet is also available digitally or by telephone via our call centres as described in paragraph 43 below.

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39. As at 1 February 2017, Tatts (through the subsidiaries mentioned in paragraph 21) operated 1,401 retail outlets for wagering. Of those retail outlets:

- (a) 169 are agencies or branches (that is, retail shops often described as “the TAB”);
- (b) 865 are Pub TABs;
- (c) 162 are Club TABs;
- (d) 110 are on course, that is at a racetrack venue; and
- (e) 95 are stand-alone SSTs.

As indicated in paragraph 37, I refer to the wagering conducted from these locations as Tatts' “retail wagering business”.

40. Tatts requires retail venues in its States/Territory to have a full racing television service in venue. For standalone agencies or branches (i.e. not Pub TABs or Club TABs), Tatts contracts directly with Sky Channel Pty Ltd, a subsidiary of Tabcorp, to make racing vision available in those agencies. For Pub TABs and Club TABs, the agents who host the Tatts wagering outlet in those venues are also required to have a full racing television service.

41. In April 2015 Tatts introduced its UBET retail stores which were advertised as “the new TAB”. The UBET signage and layout is depicted in the photographs at **Tab 16 of Exhibit RC-1 [TAT.001.015.0847]** which were taken at the new UBET store in New Farm, Queensland, which opened to the public on 9 April 2015. Older Tatts retail outlets are progressively being converted to the UBET format, with an initial focus on Tatts' home State of Queensland and the Northern Territory. UBET is the name used within Tatts for the Wagering Division of its business. The UBET app was also introduced and enables Tatts customers to participate in digital betting from their mobile devices. Tatts' introduction of the new UBET brand is addressed in more detail in paragraph 153(a) and 154.

42. The following table classifies the retail outlets in the States and Territory in which Tatts conducts licensed retail wagering as at 1 February 2017.

	QLD	SA	NT	TAS	Total
<b>Agencies (incl. branches)</b>	95	46	7	21	169
<b>PubTABs</b>	472	269	21	103	865
<b>ClubTABs</b>	127	17	18	-	162



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<b>On-Course</b>	58	32	9	11	110
<b>Standalone SSTs</b>	86	1	1	7	95
<b>TOTAL</b>	<b>838</b>	<b>365</b>	<b>56</b>	<b>142</b>	<b>1,401</b>

43. The wagering offered at Tatts retail outlets (except in-play betting, which may only be conducted in-person or by telephone via our call centres), can also be conducted by means of:
- (a) Tatts websites: Tatts.com and UBET.com;
  - (b) the UBET app for iPhone, iPad and Android devices; and
  - (c) Tatts' telephone lines– which allows both automated and operator-assisted telephone betting.

I refer to wagering conducted by the means described in (a) to (b) as Tatts' digital wagering business; and wagering conducted by the means described in (c) as Tatts' telephone or 'telebet' wagering business.

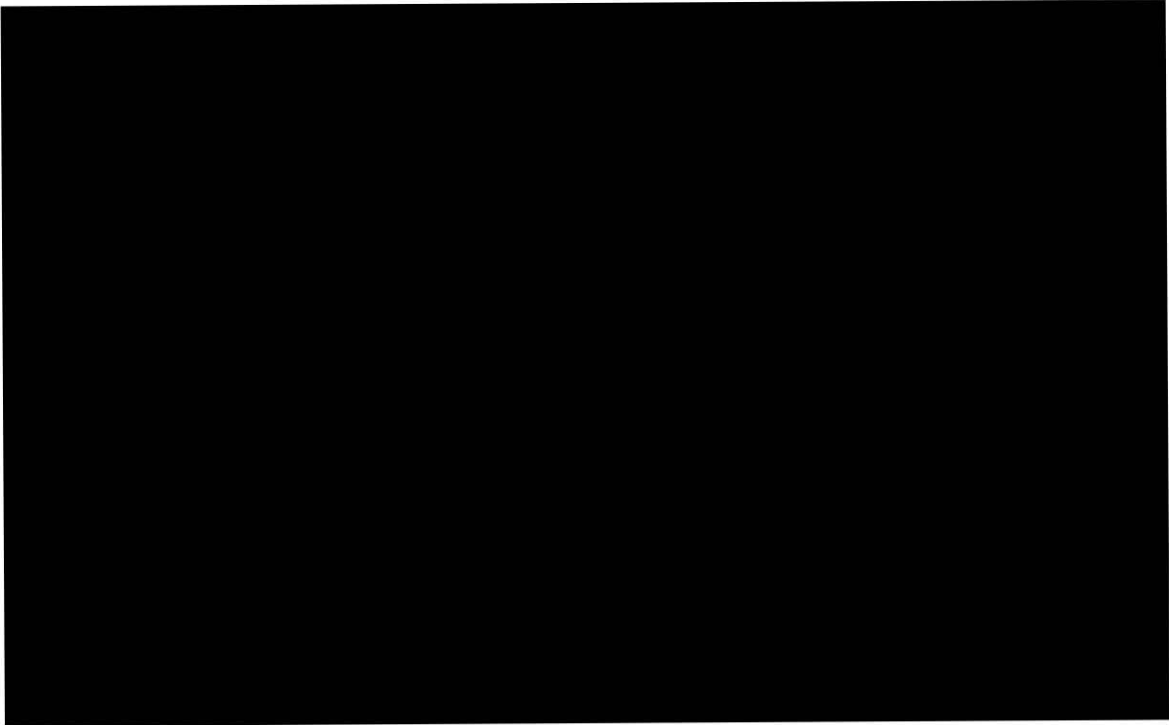
44. As at 1 February 2017 approximately 2.3 million customers were registered online with either Tatts.com or UBET.com and other Tatts card based programs. Tatts' accounts are structured so that customers have access to the Group's wagering and lottery offerings from the same single account. Not all customers use their accounts for both purposes, so not all of those 2.3 million accounts are used for wagering. Of the 2.3 million, approximately **[HIGHLY Confidential to Tatts]** [REDACTED] accounts are regarded as "active" wagering customers, that is, customers who had placed a bet online in the past month.

45. Tatts conducts its digital and telephone wagering businesses nationwide. Digital and telephone customers are not limited to the States and Territories in which Tatts holds retail wagering licences, namely Queensland, South Australia, Tasmania and the Northern Territory. Digital and telephone customers can come from anywhere in Australia, or overseas.

46. Tatts classifies digital and telephone customers internally as follows. Customers whose nominated home address is in Queensland are registered with UBET QLD. Customers whose nominated home address is in South Australia are registered with UBET SA. Customers whose nominated home address is in the Northern Territory are registered with UBET NT. Customers whose nominated home address is in Tasmania, New South Wales, Victoria, Western Australia, Australian Capital Territory or overseas are registered with UBET TAS, unless they became customers before Tatts acquired Tote Tasmania (in March 2012) and have not changed address since then, in which case they were, and still are, registered with UBET NT.



47. The following Chart identifies the location of the [HIGHLY Confidential to Tatts] [REDACTED] 'active' wagering customers. [HIGHLY Confidential to Tatts]



48. At **Tab 7 of Highly Confidential Exhibit RC-3 [TAT.001.015.0809]** is a spreadsheet setting out Tatts' wagering turnover (i.e. total bets wagered) for each financial year from FY12 to FY16 (the **Wagering Turnover Spreadsheet**). The Wagering Turnover Spreadsheet divides the turnover by:

- (a) Tatts entity - "NT TAB" (that is, UBET NT), "SA TAB" (that is, UBET SA), "TABQ" (that is, UBET QLD) or "TAS TAB" (that is, UBET TAS);
- (b) product type - totalisator ("pari-mutuel") or fixed price betting;
- (c) event type - racing or sports betting; and
- (d) distribution channel - internet (i.e. digital), retail, or telebet.

I am informed by Ms Tucker and believe that the Wagering Turnover Spreadsheet was prepared based on Tatts' transaction logs and accurately reflects those logs. The logs used in the preparation of the Wagering Turnover Spreadsheet can, if necessary, be made available for inspection (subject to appropriate arrangements to protect the confidentiality of the information in the logs).

49. At **Tab 8 of Highly Confidential Exhibit RC-3 [TAT.001.015.0804]** is a spreadsheet showing the same turnover, but limited to digital and telephone betting (the **Phone and Internet Turnover Spreadsheet**). It also contains more detail, in that it breaks down the turnover for each UBET entity by the nominated home address of the customer. In this way, it shows the extent to which Tatts derives wagering turnover from customers outside the States/Territories

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in which it holds the exclusive retail and totalisator licences (i.e. Queensland, South Australia, Tasmania and the Northern Territory) - see the next paragraph. I am informed by Ms Tucker and believe that the Phone and Internet Turnover Spreadsheet was prepared based on Tatts' transaction logs and accurately reflects those logs. The logs used in the preparation of the Phone and Internet Turnover Spreadsheet can, if necessary, be made available for inspection (subject to appropriate arrangements to protect the confidentiality of the information in the logs).

50. The Phone and Internet Turnover Spreadsheet shows that the vast majority of Tatts' telephone and digital turnover is from customers located in the States/Territories in which it holds the exclusive retail and totalisator licences (i.e. Queensland, South Australia, Tasmania and the Northern Territory). Taking FY12 and FY16 as examples, the Spreadsheet shows that:

- (a) in FY12, Tatts' derived [HIGHLY Confidential to Tatts] [REDACTED] of its telephone and digital turnover from the four "Tatts" States/Territories and the remaining [HIGHLY Confidential to Tatts] [REDACTED] from the other four States/Territories or overseas, as follows:
- (i) [HIGHLY Confidential to Tatts] [REDACTED] from customers in Queensland;
  - (ii) [HIGHLY Confidential to Tatts] [REDACTED] from customers in South Australia;
  - (iii) [HIGHLY Confidential to Tatts] [REDACTED] from customers in the Northern Territory;
  - (iv) [HIGHLY Confidential to Tatts] [REDACTED] from customers in Tasmania;
  - (v) [HIGHLY Confidential to Tatts] [REDACTED] from customers in New South Wales;
  - (vi) [HIGHLY Confidential to Tatts] [REDACTED] from customers in Victoria;
  - (vii) [HIGHLY Confidential to Tatts] [REDACTED] from customers in the Australian Capital Territory;
  - (viii) [HIGHLY Confidential to Tatts] [REDACTED] from customers in Western Australia;
  - (ix) [HIGHLY Confidential to Tatts] [REDACTED] from overseas customers.

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- (b) in FY16, Tatts' derived [HIGHLY Confidential to Tatts] [REDACTED] of its telephone and digital turnover from the four "Tatts" States/Territories and the remaining [HIGHLY Confidential to Tatts] [REDACTED] from the other four States/Territories or overseas, as follows:
- (i) [HIGHLY Confidential to Tatts] [REDACTED] from customers in Queensland;
  - (ii) [HIGHLY Confidential to Tatts] [REDACTED] from customers in South Australia;
  - (iii) [HIGHLY Confidential to Tatts] [REDACTED] from customers in the Northern Territory;
  - (iv) [HIGHLY Confidential to Tatts] [REDACTED] from customers in Tasmania;
  - (v) [HIGHLY Confidential to Tatts] [REDACTED] from customers in New South Wales;
  - (vi) [HIGHLY Confidential to Tatts] [REDACTED] from customers in Victoria;
  - (vii) [HIGHLY Confidential to Tatts] [REDACTED] from customers in the Australian Capital Territory;
  - (viii) [HIGHLY Confidential to Tatts] [REDACTED] from customers in Western Australia;
  - (ix) [HIGHLY Confidential to Tatts] [REDACTED] from overseas customers.

51. The Phone and Internet Turnover Spreadsheet, when reviewed for:

- (a) pari-mutuel betting only, shows that in FY16, [HIGHLY Confidential to Tatts] [REDACTED] of Tatts' telephone and digital pari-mutuel turnover came from customers in the four "Tatts" States/Territory and [HIGHLY Confidential to Tatts] [REDACTED] came from customers in NSW, Victoria or the ACT. The remaining [Confidential to Tatts] [REDACTED] came from customers in Western Australia or outside Australia.
- (b) fixed price betting only, shows that in FY16, [HIGHLY Confidential to Tatts] [REDACTED] of Tatts' telephone and digital fixed odds turnover came from customers in the four "Tatts" States/Territory and [HIGHLY Confidential to Tatts] [REDACTED] came from customers in NSW, Victoria or the ACT. The remaining [HIGHLY



Confidential to Tatts] [REDACTED] came from customers in Western Australia or outside Australia.

## Section C - Tatts' commitment to responsible wagering

52. Tatts is committed to providing its wagering products in a safe and secure environment and its responsible gambling commitments are a key focus. Tatts' 2016 Annual Report referred to that commitment, and some of Tatts' key initiatives in responsible gambling, at pages 38-39 (**Tab 6 of Exhibit RC-1 [TAT.001.014.0638]** at [.0657]). To this end, Tatts has developed responsible gambling programs for its wagering business, to assist those people who may be experiencing problems with their gambling behaviour, and to keep its wagering customers well informed. These programs are reviewed regularly and involve a variety of measures which include:

- (a) providing responsible gambling information to customers (including "Gamble Responsibly" warning messages as required by State and Territory laws);
- (b) pre-commitment strategies, where customers are able to set a monetary limit over which they are not able to bet;
- (c) compliance with relevant Australian laws and regulations on advertising and promotions - for example, restrictions on the time of day for TV advertisements, restrictions on player inducements, and laws affecting the content of advertisements; and
- (d) self-exclusion programs, where customers are able to submit a Self-Exclusion Notice that will exclude them from using their account with Tatts or from betting in specified retail outlets.




**Tab 17 of Exhibit RC-1 [TAT.001.017.0300]** is a copy of the Responsible Gambling page of the UBET.com website, which includes instructions to customers on "Self-Exclusion" and how to "Set Your Bet Limit". **Tab 18 of Exhibit RC-1 [TAT.001.017.0297]** is a copy of the Responsible Gambling page and the "Set Your Bet Limit" page of the Tatts.com website.

53. Tatts' responsible gambling programs have regard to the applicable manuals and codes of practice in the States and Territories in which Tatts is licensed, as well as community expectations and needs in regard to player protection and harm minimisation. By way of example of the applicable manuals and codes of practices, in Queensland the Department of Justice and Attorney General has published the Queensland Responsible Gambling Code of Practice (**Tab 19 of Exhibit RC-1 [TAT.001.017.0067]**) and the Queensland Responsible Gambling Resource Manual. Section D of the Queensland Responsible Gambling Resource Manual (**Tab 20 of Exhibit RC-1 [TAT.001.017.0028]**), which relates to wagering, was developed in collaboration with Tatts subsidiary UBET Qld.



54. Tatts delivers responsible gambling compliance training to its staff, including by an annual refresher course. At **Tab 2 of Confidential Exhibit RC-2 [TAT.001.017.0082]** and **Tab 21 of Exhibit RC-1** (with confidential information redacted) **[TAT.001.030.0023]** is a copy of the presentation delivered during the 2016 Responsible Gambling Refresher Training course.

## Section D – Licensing regimes governing wagering in the States and Territories

55. Gambling, of which wagering forms part, is subject to extensive statutory regulation, both federally and in the States and Territories. The Commonwealth enacted the *Interactive Gambling Act 2001* (Cth) which had an object of minimising problem gambling by limiting the provision of online gambling services to Australians. This legislation makes it an offence to provide certain online gambling services to consumers in Australia, including the provision of 'in-play betting'. The operation of that legislation was considered in detail in the *Illegal Wagering Report* (**Tab 2 of Exhibit RC-1 [TAT.001.015.0192]**). That Report also considered the 'click to call' style products being offered by corporate bookmakers, which allow bettors to place in-play bets over their mobile devices without speaking to an operator. The Report described these 'click to call' products (at page 108), which are not offered by Tatts, as "*effectively provid[ing] in-play sports wagering services online through a mobile device in contravention of the intent of the Act*".
56. Corporate bookmakers sought the removal of the prohibition on in-play betting online under the *Interactive Gambling Act*, claiming that the restrictions on in-play betting made them uncompetitive with unlicensed offshore operators offering wagering over the internet to Australian customers. I commented on this in **[Confidential to Tatts]**   
  
 and in my later letter of 3 February 2016 to Senator Eric Abetz (**Tab 22 of Exhibit RC-1 [TAT.001.003.0700]**). An association of licensed corporate bookmakers (including Sportsbet and William Hill), then known as the Australian Wagering Council (**AWC**), also made a submission to the Review (November 2015, **Tab 23 of Exhibit RC-1 [TAT.001.015.0044]**), contending that the prohibition of in-play wagering should be removed (p 29-31) and noting the "very competitive market" and "fiercely competitive" environment (p 10) in which Australian wagering businesses exist. The AWC also responded to my letter of 3 February 2016 to Senator Eric Abetz (see **Tab 24 of Exhibit RC-1 [TAT.001.003.0705]**). I read the AWC submission and the AWC response to my letter, when they were released. I disagreed, and still disagree, with a number of the arguments advanced in those documents, particularly the contention that the prohibition on in-play wagering online should be removed. I can elaborate on other aspects of the documents I disagree with, if required.
57. Following the *Illegal Wagering Report*, the Federal Government has introduced the *Interactive Gambling Amendment Bill 2016* (Cth), which was read in the House of Representatives on 10 November 2016 and read in the Senate on 9 February 2017. **Tab 25 of Exhibit RC-1 [TAT.001.015.0743]** is the House of Representatives Second Reading Speech for the Bill, which records (at p 1) that the Bill is the "first stage of the government's process to implement"

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"18 of the 19 recommendations" in the Illegal Wagering Report. **Tab 26 of Exhibit RC-1 [TAT.001.015.0458]** contains the Explanatory Memorandum to the Bill. **Tab 27 of Exhibit RC-1 [TAT.001.015.0616]** contains a short summary of the Bill from the Federal Parliament website. In the Explanatory Memorandum, the Federal Government noted that the licensed corporate bookmakers had discontinued their 'click to call' in-play betting services on 5 October 2016 at the request of the Northern Territory Government. The Bill, if enacted, will make 'click to call' in-play betting illegal in all States and Territories, by "*tightening the definition of a 'telephone betting service' (a regulated interactive gambling service) to require dealings with customers to be wholly by way of spoken conversations between individuals*" (Explanatory Memorandum, page 2, first bullet point). It will also seek to stop the unlicensed overseas wagering operators by prohibiting a person providing regulated interactive gambling services to Australians unless the person holds a licence under the law of an Australian State or Territory (Explanatory Memorandum, page 1, first bullet point).

58. Because Tatts (through its subsidiaries) holds wagering licences in Queensland, Northern Territory, South Australia and Tasmania, its wagering business is subject to four separate licensing regimes maintained by those States and that Territory. The legislation governing gambling in the States and Territories was described at pages 61 – 73 of the Illegal Wagering Report (**Tab 2 of Exhibit RC-1 [TAT.001.015.0192]**). The legislation is complex, and differs between States and Territories. Each State and Territory in which Tatts is licensed to conduct wagering operations imposes different conditions and requirements on Tatts. Licence fees, wagering taxes, Product Fees and other industry support payments (paid to the racing industry), imposed in the various States and Northern Territory, differ. The low taxing regime in the Northern Territory for parties issued with sports bookmaking licences has enabled the rapid development of online wagering operations by corporate bookmakers licensed only in the Northern Territory, **[Confidential to Tatts]** [REDACTED]. In my letter dated 3 February 2016 to Senator Abetz, I described the position in the Northern Territory in relation to sports bookmaking licences as a "*virtual zero tax environment*" which returned approximately AU\$6.5m in tax on wagers estimated at AU\$8 billion (**Tab 22 of Exhibit RC-1 [TAT.001.003.0700]**). Competition from licensed corporate bookmakers is part of the competition which Tatts faces which I refer to in more detail in paragraphs 105 to 128.
59. The wagering licences held by Tatts were issued by Governments in return for substantial licence payments and, in some cases, continuing licence fees. The terms of the "Confidential Racing Agreements" (see paragraph 6) are relevant to this aspect.
60. **[Confidential to Tatts]** [REDACTED] Tatts' contributions to the State and Territory Governments and local racing industries included:
- (a) more than \$2 billion to UBET's racing industry partners in direct payments since 2000;



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- (b) more than \$500 million in wagering tax to UBET's partner Governments since 2000; and
- (c) \$234 million paid by UBET to Governments and industry in racing related payments in the 2015 financial year

**(Tab 1 of Highly Confidential Exhibit RC-3 [TAT.001.015.0810]).**

61. Tatts pays fees to various State and Territory racing and sports bodies which can be broadly categorised as:
- (a) "product fees" which are specific to Tatts and arise in connection with its retail exclusivity in Queensland, South Australia, Tasmania and the Northern Territory (**Product Fees**). I address Product Fees further in paragraphs 65, 67 to 70, 81 to 82, 99(b) and 99(e);
  - (b) "race field fees" which apply to all licenced operators in all jurisdictions in Australia (**Race Field Fees**). I address Race Field Fees further in paragraphs 64, 66, 67, 83, 88 to 97, 99(c) and 99(f); and
  - (c) "sports control body fees" which apply to all licenced operators in all jurisdictions in Australia (**Sports Control Body Fees**). I address Sports Control Body Fees further in paragraphs 63 and 64.
62. The expression "product fee" is also sometimes generically used to describe all of the different types of payments referred to in the above paragraph. The Illegal Wagering Report (**Tab 2 of Exhibit RC-1 [TAT.001.015.0192]** at page 12 defines product fees in this way.
63. Details of the Sports Control Body Fees payable by Tatts to various bodies controlling sports on which Tatts offers wagers (tennis, NRL, AFL, golf, cricket and others) are at **Tab 3 of Confidential Exhibit RC-2 [TAT.001.015.0749]**. **Tab 9 of Highly Confidential Exhibit RC-3 [TAT.001.015.0851]** is a spreadsheet that sets out the amounts paid by Tatts to State and Territory Governments, racing bodies and sports bodies in FY12 to FY16 (the **Wagering Tax and Industry Fee Spreadsheet**). I am informed by Ms Tucker and believe that the Wagering Tax and Industry Fee Spreadsheet was prepared based on Tatts' management accounts and accurately reflects those management accounts. The accounts used in the preparation of the Wagering Tax and Industry Fee Spreadsheet can, if necessary, be made available for inspection (subject to appropriate arrangements to protect the confidentiality of the information in the accounts). In respect of Sports Control Body Fees (named in the Spreadsheet as "Product Fee - Sports"), the Wagering Tax and Industry Fee Spreadsheet records that Tatts made total payments of:
- (a) **[HIGHLY Confidential to Tatts]** [REDACTED] in Sports Control Body Fees in FY16; and



- (b) [HIGHLY Confidential to Tatts] ██████████ in Sports Control Body Fees in FY15.
64. Corporate bookmakers, as well as Tatts and Tabcorp, pay Race Field Fees to use race field information compiled by State and Territory racing bodies in their wagering businesses. They also pay Sports Control Body Fees as charged by sporting bodies (for example the NRL and AFL) for permitting betting on the sports they organise and control. The AWC submission to the Review (p 2, second last paragraph), refers to "*product fee contributions*" in this sense (Tab 23 of Exhibit RC-1 [TAT.001.015.0044]). I address these fees further in paragraph 88 and following.
65. Product Fees (as distinct from Race Field Fees and Sports Control Body Fees) are charges which corporate bookmakers do not pay. States and Territories grant exclusive rights to operators to offer racing and sports wagering products in retail outlets, or "on-course" at race tracks, and charge Product Fees in return for those rights. Currently, only Tatts (in Queensland, South Australia, Tasmania and the Northern Territory) and Tabcorp (in Victoria, New South Wales and the Australian Capital Territory) hold such rights and therefore pay these fees. The corporate bookmakers do not pay them. The terms of the Confidential Racing Agreements are relevant to these types of Product Fees which Tatts pays.
66. Race Field Fees are fees paid by licensed betting operators (including Tatts, Tabcorp and the corporate bookmakers) to racing bodies in each State and Territory. Payment of these fees enables Tatts (and the other operators) to lawfully offer bets on races conducted in those States and Territories, using race field data compiled by the body holding the race (often a country or regional racing club). This applies regardless of where the operator holds a licence - so, for example, Tatts pays Race Field Fees to racing bodies in New South Wales, Victoria, the Australian Capital Territory and Western Australia even though it does not hold a wagering licence in those States and Territories. In some States and Territories Race Field Fees are fixed by legislation; in others, fees are agreed between licensed operators and the racing bodies. The differences are examined in detail in the Race Field Fee Schedule referred to in paragraph 94.
67. The wagering taxes charged to Tatts in Queensland, South Australia, Northern Territory and Tasmania are set out in Section F, as are the Race Field Fees that apply to all race wagering operators licensed in Australia. Section F also addresses the Product Fees charged to Tatts in Queensland, South Australia and Northern Territory, to the extent I am permitted to disclose those fees under the Confidential Racing Agreements. In Tasmania, no Product Fees apply.
68. I am presently not able to discuss the extent of the Product Fees paid in the Northern Territory, because to do so would involve disclosure of aspects of the Confidential Racing Agreements. The Product Fees payable in Northern Territory were mentioned, without their details being disclosed, in Tatts' ASX announcement dated 3 November 2015 (Tab 28 of Exhibit RC-1 [TAT.001.015.0454]) (the "NT ASX Announcement"). The NT ASX Announcement states

that "an annual licence fee (\$250,000 subject to indexation) is payable to the Northern Territory, together with ongoing fixed and variable payments to the racing industry".

69. Details of the Product Fees payable in South Australia were disclosed in the ASX Announcement of 15 August 2001 by TAB Queensland (now UBET QLD) regarding its acquisition of SA TAB (**Tab 29 of Exhibit RC-1 [TAT.001.015.0830]**) and in the Thoroughbred Racing SA Annual Report FY16 (**Tab 30 of Exhibit RC-1 [TAT.001.015.0831]** at pages 6 and 8).
70. Details of the Product Fees payable in Queensland were disclosed in the Queensland ASX Announcement dated 27 June 2014 referred to in paragraph 15(m) above (**Tab 4 of Exhibit RC-1 [TAT.001.015.0455]**). Page 2 of the Queensland ASX Announcement records the Product Fees payable to Racing Queensland.

## **Section E – The Wagering licences and agreements which Tatts and Tabcorp currently hold in Australian States and Territories**

### *Tatts*

71. Tatts (through its subsidiaries) holds licences and other agreements with each of Queensland, South Australia, Tasmania and the Northern Territory which authorise Tatts to offer racing and sports wagering products in retail outlets and "on-course" at race tracks, in those States and Territory (**wagering rights**). The wagering rights are exclusive to Tatts, except that a number of bookmakers are licensed to supply *on-course* bookmaking only, under the:
- (a) *Racing Integrity Act 2016* in Queensland;
  - (b) *Authorised Betting Operations Act 2000* in South Australia;
  - (c) *Gaming Control Act 1993* in Tasmania; and
  - (d) *Racing and Betting Act* in the Northern Territory.
72. The wagering rights give Tatts different periods of exclusivity as follows:
- (a) Queensland – until 30 June 2044;
  - (b) South Australia – until 10 January 2017, however the exclusivity period is to be extended by the South Australian Government to 30 June 2017 to allow continued negotiations between the South Australian racing industry, the South Australian Government and Tatts regarding longer term exclusivity;
  - (c) Tasmania - until 26 March 2027; and
  - (d) Northern Territory - until 31 October 2035.



73. The Northern Territory Government issues sports bookmakers' licences which are not exclusive. A significant number of corporate bookmakers, which compete with Tatts in online wagering, hold sports bookmaker licences issued by the Northern Territory Government. Those licences do not authorise their owners to offer wagering at retail premises. Only UBET NT is authorised to do so in the Northern Territory. Holders may offer price odds racing and sports wagering through digital channels and by telephone via call centres, and do so for customers throughout Australia and internationally. At the time of preparing this statement, the NT Government had published a list of the sports bookmakers and betting exchange operators licensed in the Northern Territory, at <https://www.nt.gov.au/justice/racing-commission/sports-bookmakers-and-betting-exchange-operators> (Tab 31 of Exhibit RC-1 [TAT.001.012.0002]). The list includes the following wagering operators which are competitors of Tatts in digital wagering: Bet365, Betchoice / Unibet, Betfair, Betting Club, CrownBet, Ladbrokes, Luxbet (owned by Tabcorp), Sportsbetting.com.au, Sportsbet, TopBetta and William Hill. It also lists other entities that do not conduct fixed odds race or sports wagering but are licensed in NT, namely Betfair (a betting exchange), DraftStars and PlayON (fantasy sports), Lottoland (lotto betting), SportChamps (a social game where you bet on real events with virtual money) and Weather Lottery (a kind of lottery). Many of the sports bookmakers that compete with Tatts in digital wagering are international companies that started or acquired Australian operations after the High Court's 2008 decision in *Betfair v Western Australia* (see paragraph 109). For example, Sportsbet is owned by Irish company Paddy Power, Bet365 is UK based and one of the world's biggest online gambling groups, William Hill and Ladbrokes are UK based, and Unibet is a Swedish company.

74. The licences and agreements which confer the wagering rights are found in **Confidential Exhibit RC-2** at the Tabs noted below (unless their inclusion is prohibited by a Confidential Racing Agreement):

(a) **Queensland**

- (i) Race Wagering Licence expiring on 30 June 2098 (as referred to in the Queensland ASX Announcement);
- (ii) Sports Wagering Licence expiring on 30 June 2098 (as referred to in the Queensland ASX Announcement);
- (iii) Exclusivity Deed entered on or around 15 December 2014 between TattsBet Limited (which became UBET QLD) and the State of Queensland. This is a Confidential Racing Agreement; and
- (iv) Queensland Product and Program Deed entered on or around 8 December 2014 between TattsBet Limited (which became UBET QLD) and the State of Queensland. This is a Confidential Racing Agreement;

(b) **South Australia**



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- (i) Approved Licensing Agreement dated 11 December 2001 between SA TAB Pty Limited (later to become Unitab Pty Limited, then XTAB Pty Limited) and the Treasurer of South Australia (**Tab 4 of Confidential Exhibit RC-2 [TAT.001.009.3289]** from page [.3294]);
  - (ii) TAB Duty Agreement dated 6 December 2001 between SA TAB Pty Limited and the Treasurer of South Australia (**Tab 5 of Confidential Exhibit RC-2 [TAT.001.010.0001]** from page [.0012]);
  - (iii) Major Betting Operations Licence dated 10 January 2002 issued to Unitab Pty Limited (later to become XTAB Pty Limited); expiring on 30 June 2100 (**Tab 6 of Confidential Exhibit RC-2 [TAT.001.009.3215]**);
  - (iv) XTAB later sold its business to UBET SA as provided in the *TAB (Disposal) Act 2000* (SA);
  - (v) The Licensing Agreement was varied by Agreements dated 13 May 2004 (**Tab 4 of Confidential Exhibit RC-2 [TAT.001.009.3289]**) and 30 January 2015 (**Tab 7 of Confidential Exhibit RC-2 [TAT.001.009.3249]**);
  - (vi) The TAB Duty Agreement was varied by Agreements dated December 2004 (**Tab 5 of Confidential Exhibit RC-2 [TAT.001.010.0001]** from page [.0006]) and 5 August 2008 (**Tab 5 of Confidential Exhibit RC-2 [TAT.001.010.0001]**);
  - (vii) The Licence to UBET SA conferred by the agreements in paragraphs (i) to (iv) above was exclusive to 10 January 2017 pursuant to section 12(9) of the *Authorised Betting Operations Act 2000* (SA) and clause 11.2(b) of the Approved Licensing Agreement, and the exclusivity period is to be extended by the South Australian Government to 30 June 2017 to allow continued negotiations between the South Australian racing industry, the South Australian Government and Tatts regarding longer term exclusivity; and
  - (viii) Racing Distribution Agreement dated 15 August 2001 and Variation to the Racing Distribution Agreement dated 24 July 2008. These are Confidential Racing Agreements.
- (c) **Tasmania**
- (i) Tasmanian Gaming Licence dated 14 April 2015 issued to UBET TAS (**Tab 8 of Confidential Exhibit RC-2 [TAT.001.009.3218]**) expiring 25

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March 2062 and an associated statutory right of exclusivity until March 2027 under section 76ZEC of the *Gaming Control Act 1993* (Tas);

(d) **Northern Territory**

- (i) Totalisator Licence issued to UBET NT under the Totalisator Licensing and Regulation Act (NT) with effect from 1 November 2015 and expiring on 31 October 2035 (as referred to in the NT ASX Announcement);
- (ii) Licence to Conduct Business of Sports Bookmaker expiring in 2035 (as referred to on page 106 of Tatts' 2016 Annual Report at **Tab 6 of Exhibit RC-1 [TAT.001.014.0638]** at 0691). This is a non-exclusive sports bookmaker licence under the *Racing and Betting Act* (NT) which permits Tatts to supply fixed price wagering from the premises specified on the licence;
- (iii) Schedule of Conditions for the Licence for the Conduct of the Business of a Sports Bookmaker, dated 1 September 2015; and
- (iv) NT Fee and Adjustment Deed dated 3 November 2015 between UBET NT and the Northern Territory of Australia. This is a Confidential Racing Agreement.

*Tabcorp*

75. Tabcorp's submission of 16 November 2015 to the Review (**Tab 3 of Exhibit RC-1 [TAT.001.015.0146]**) records it as holding the retail and totalisator wagering licences in Victoria, New South Wales and the Australian Capital Territory (page 1).

76. The Victorian Government's submission to the Review (**Tab 32 of Exhibit RC-1 [TAT.001.015.0127]**) recorded (at page 6):

*"Tabcorp commenced its 12-year wagering and betting licence in Victoria in August 2012. The licence included a monopoly terrestrial off-course retail network (TAB), pari-mutuel (totalisator) betting, fixed odds betting, a betting exchange (which Tabcorp does not currently operate) and operation of approved simulated racing events ('Trackside'). The tax arrangements associated with the wagering and betting licence support the viability of the racing industry."*

77. It is my understanding that Tabcorp's wagering licences are:

- (a) New South Wales - Tabcorp subsidiary TAB Limited holds a licence under the *Totalisator Act 1997* (NSW) which expires in 2097, and is exclusive until 2033. Tabcorp's NSW Licence announcement of 10 September 2013 (**Tab 33 of Exhibit RC-1 [TAT.001.015.0447]**) describes details of this licence;

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- (b) Victoria – Tabcorp subsidiary Tabcorp Wagering (Vic) Pty Ltd – holds the sole Victorian Wagering and Betting Licence, which expires in 2024. The wagering business is operated through a joint venture with Racing Products Victoria and VicRacing. Tabcorp's Victorian Licence announcement of 19 July 2011 (**Tab 34 of Exhibit RC-1 [TAT.001.001.0089]**) describes details of this licence, and the various tax and product fee arrangements; and
- (c) Australian Capital Territory – Tabcorp subsidiary Tabcorp ACT Pty Ltd holds an exclusive Totalisator Licence which expires in 2064, and Sports Bookmaking Licence with an initial term of 15 years and provision for rolling extensions to 2064. Tabcorp's announcement of 14 October 2014 (**Tab 35 of Exhibit RC-1 [TAT.001.015.0448]**) regarding its acquisition of ACTTAB describes details of these licences.
- (d) Northern Territory - Tabcorp subsidiary Luxbet Pty Ltd is one of the corporate bookmakers licensed in the Northern Territory, as noted in the list from the NT Government's website exhibited to paragraph 73 above.

78. In addition to its licences in New South Wales, Victoria, the Australian Capital Territory and (for Luxbet) the Northern Territory, in Western Australia it is my understanding that Tabcorp has a Pooling Agreement with Racing and Wagering Western Australia (**RWWA**) until 2024. RWWA is the licensed wagering operator in Western Australia. It operates the WA TAB which is owned by the State of Western Australia. The Pooling Agreement was announced by Tabcorp on 3 August 2012 as providing for pari-mutuel wagers placed through RWWA to be comingled into the SuperTAB pool hosted by the Victorian TAB operated by Tabcorp (**Tab 36 of Exhibit RC-1 [TAT.001.001.0098]**).

## **Section F - The payments made by Tatts by way of wagering taxes, product fees and race field fees, to State and Territory Governments and industry racing bodies**

### ***Wagering Taxes and Product Fees***

79. The wagering taxes payable to Governments under the wagering licences which Tatts holds are complex, and differ between each State and Territory and between licences. For example in Queensland, the tax on totalisator bets is 14% of Tatts' commission and the tax on fixed price bets is 10% of Tatts' gross revenue. They are summarised in the Queensland ASX Announcement (**Tab 4 of Exhibit RC-1 [TAT.001.015.0455]**). These taxes are explained in more detail (with references to the relevant agreements and legislation, and subject to the confidentiality restrictions in the relevant agreements) in the schedule referred to in paragraph 82 below.



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80. In Queensland, UBET QLD agreed to pay \$150m as a licence fee to secure the exclusive right to wagering, payable by four instalments of \$37.5 million. The Queensland ASX Announcement records these payments.
81. Like the wagering taxes, the Product Fees associated with the State and Territory licences are complex, and differ between each State and Territory. The Confidential Racing Agreements are relevant to the Product Fees which Tatts pays. The position in Queensland as to payment of fees (including Product Fees) is recorded in the Queensland ASX Announcement.
82. At **Tab 9 of Confidential Exhibit RC-2 [TAT.001.015.0763]** is a schedule identifying, for each of the States and Territories mentioned in paragraph 74 the wagering taxes paid to Government, Product Fees payable to racing industries (excluding Race Field Fees) and the statutory or contractual basis for the imposition of the tax or fee (the **Wagering Tax and Industry Fee Schedule**). The Wagering Tax and Industry Fee Schedule was prepared by Clayton Utz in conjunction with Ms Tucker. I am informed by Ms Tucker and believe that the contents of the Wagering Tax and Industry Fee Schedule are accurate.
83. A separate schedule for Race Field Fees is provided in paragraph 94 because (as explained in paragraph 91) Race Field Fees are payable in all States/Territories of Australia (not just those in which Tatts holds a licence namely Queensland, South Australia, the Northern Territory and Tasmania). However, to the extent that Race Field Fees are applied as a deduction to a wagering tax or Product Fee, that is addressed in the Wagering Tax and Industry Fee Schedule. Despite Tatts being entitled to certain deductions based on the Race Field Fees it pays, Tatts still pays a significantly greater proportion of its revenue to the racing industry than the corporate bookmakers, which (as mentioned in paragraph 85) only pay Race Field Fees and Sports Control Body Fees and not Product Fees.
84. A significant feature of wagering licensing in Australia is the taxation regime established in the Northern Territory, which (as set out in the Wagering Tax and Industry Fee Schedule) imposes an annual maximum tax on fixed price betting which was \$575,000 in FY16. As explained in paragraphs 58 above and 145(b) below, this has enabled the rapid development of online wagering operations by corporate bookmakers licensed only in the Northern Territory, which pay only the capped tax on fixed price betting and not the other taxes and product fees that Tatts and Tabcorp pay under their licences for retail and totalisator operations. Apart from the annual tax capped at \$575,000, the taxes and fees referred to in the "Northern Territory" row of the Wagering Tax and Industry Fee Schedule are only paid by Tatts, not by any of the other bookmakers licensed in the Northern Territory.
85. The Northern Territory wagering tax imposed on corporate bookmakers (namely \$575,000 in FY16) is significantly lower than the wagering taxes paid by Tatts in Queensland, Tasmania, South Australia and the Northern Territory (as shown in the Wagering Tax and Industry Fee Schedule). Those taxes paid by Tatts amounted to **[HIGHLY Confidential to Tatts]** [REDACTED] in FY16, as set out in paragraph 99(a). In addition, the corporate bookmakers

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do not pay the Product Fees described in paragraph 65 to the racing industry at all - the only fees they pay to the racing industry are the Race Field Fees described in paragraphs 88 to 97 below (which Tatts also pays). In FY16, Tatts paid a total of **[HIGHLY Confidential to Tatts]** [REDACTED] in Product Fees of the type that are not paid by corporate bookmakers, as set out in paragraph 99(b).

86. This difference confers a significant competitive advantage on corporate bookmakers conducting Australia-wide wagering businesses (online) authorised by a Northern Territory Sports Bookmaker Licence. This competitive advantage is referred to in **[Confidential to Tatts]** [REDACTED] where I referred (at page 3) to "our licence structure [which] entrenched a competitive disadvantage in terms of tax rates" and "the fiscal inequality built into our key licence [which constrained] our ability to profitably engage in traditional and other forms of marketing... when compared to the 'corporates'" (**Tab 10 of Highly Confidential Exhibit RC-3 [TAT.001.001.0331]**). This point was also made in my letter to Senator Abetz (3 February 2016 – **Tab 22 of Exhibit RC-1 [TAT.001.003.0700]**) and in Tabcorp's submission to the Review (16 November 2015 - **Tab 3 of Exhibit RC-1 [TAT.001.015.0146]**).
87. My reference in the Queensland ASX Announcement (**Tab 4 of Exhibit RC-1 [TAT.001.015.0455]**) to the "fiscal imbalance" that has existed in the Australian wagering landscape, was to the tax regime in the Northern Territory, under which corporate bookmakers operate.

**Race field fees**

88. In addition to wagering taxes, Tatts pays Race Field Fees to racing bodies in each State and Territory in respect of races that occur in that State or Territory.
89. The Victorian Government's submission to the Review (**Tab 32 of Exhibit RC-1 [TAT.001.015.0127]**), records, relevant to Race Field Fees:

*"The wagering and betting licensee and any other WSPS (Wagering Service Providers) (including all bookmakers) enter into commercial agreements directly with racing and sport controlling bodies. These agreements usually involve race field or product fees, which are payments for the use of the racing or sport intellectual property."*

90. The Illegal Wagering Report at page 12 described Race Field Fees as follows:

*"Race field fees are fees paid by licensed betting operators in Australia to Australian racing bodies.*

*For example, if a wagering operator wishes to take bets on the Melbourne Cup, they must have an approval from Racing Victoria. Under the conditions of this*



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*approval, the wagering operator must pay a product fee to Racing Victoria and meet certain integrity obligations.*

*In some jurisdictions, race fields fees are determined by legislation; in others, these fees are determined by agreement between licensed operators and the racing bodies." (Tab 2 of Exhibit RC-1 [TAT.001.015.0192])*

91. By way of example, although Tatts does not offer wagering through retail outlets in New South Wales or Victoria (because Tabcorp holds those rights), Tatts does (in both its retail and online wagering businesses) offer bets on races conducted in New South Wales and Victoria. To do so, Tatts requires the agreement of the bodies controlling the various types of racing in those States - for example, for thoroughbred racing it requires the agreement of:

- (a) Racing NSW (in New South Wales); and
- (b) Racing Victoria (in Victoria).

92. Racing bodies and their members (i.e. racing clubs) compile certain data that wagering operators need in order to offer bets on a particular race - for example, information on the horses or dogs running in that race, the jockeys, the weight the horse carries, etc. Racing authorities in the States and Territories organise races and make the data available to wagering operators who have paid the applicable Race Field Fees.

93. Racing Victoria's submission to the Review (Tab 37 of Exhibit RC-1 [TAT.001.015.0714]) records:

*"States and territories have also passed legislation requiring WSPs [Wagering Service Providers] to enter into, and have in force, agreements with relevant controlling bodies for each racing or sport upon which they seek to bet.*

*RV [Racing Victoria] is the approved controlling body for thoroughbred racing in Victoria. Two important conditions that RV imposes upon Wagering Service Providers in granting their approval to publish and use Victorian thoroughbred race fields are:*

*- **Integrity-related cooperation:** including the provision of information, betting records and an undertaking for the WSP to take reasonable steps to prevent use of its wagering service in breach of the Rules of Racing; and*

*- **Payment of an Economic Contribution Fee:** that enables RV to continue to invest in the sustainability and growth of the racing industry whether a customer chooses to wager with a totalisator, a bookmaker, a corporate bookmaker or a betting exchange."*



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94. At **Tab 38 of Exhibit RC-1 [TAT.001.015.0752]** is a schedule of the Race Field Fees payable to racing bodies in the States and Territories (the **Race Field Fee Schedule**). The Race Field Fee Schedule was prepared by Clayton Utz in consultation with Ms Tucker. It identifies the current fee payment obligations, and the statutory or other basis upon which those obligations are imposed. I am informed by Ms Tucker and believe that the Race Field Fee Schedule is accurate.
95. The Race Field Fee Schedule indicates, and I know, that each State and Territory has enacted legislation which authorises a racing body, described in the Race Field Fee Schedule as the "Approving Body", to approve wagering operators to use race field information compiled by that racing body. Generally, the racing bodies impose terms upon which they will grant the approval, which typically include a fee to be paid by the wagering operator.
96. For example, in New South Wales (see footnote 1 of the Race Field Fee Schedule) the *Betting and Racing Act 1998* (NSW) by section 33A authorises the relevant racing control body (in the case of thoroughbred racing - Racing NSW) to approve a person to use thoroughbred race field information, and authorises that control body to impose conditions on such approval, which may include payment of a fee. Section 33A operates in conjunction with section 33 to prohibit a betting services provider (as defined) from using NSW race field information unless authorised. Statutory provisions to similar effect exist in other States and Territories, for example sections 133 and 134 of the *Racing Act 2002* (Qld). The consequence is that Tatts, or any other organisation conducting wagering on races in States and Territories in Australia, is prohibited from doing so unless it has obtained the approval of the racing bodies authorised in each State and Territory to approve the use of race field information.
97. The relevant approving body in each State/Territory either publishes standard terms and conditions that apply to all wagering operators, or enters into agreements with each wagering operator. The approvals applicable to Tatts in Queensland are found at **Tabs 39.1 to 39.4 of Exhibit RC-1 [TAT.001.010.0107], [TAT.001.010.0127], [TAT.001.010.0147], [TAT.001.010.0086]**. The approvals and conditions applicable to Tatts in Tasmania are found at **Tabs 10.1 to 10.4 of Confidential Exhibit RC-2 [TAT.001.016.0233], [TAT.001.016.0229], [TAT.001.016.0235] and [TAT.001.016.0231] and Tabs 39.5 to 39.6 of Exhibit RC-1 [TAT.001.016.0228] and [TAT.001.016.0629]**. The Integrity and Contribution Agreement applicable to Tatts in South Australia and the letters setting out the approval conditions applicable to Tatts in the Northern Territory are found at **Tab 10.5 of Confidential Exhibit RC-2 [TAT.001.015.0390] and Tabs 39.7 and 39.8 of Exhibit RC-1 [TAT.001.015.0388] and [TAT.001.015.0386]**. The approvals applicable to Tatts in the Australian Capital Territory are found at **Tab 10.6 of Confidential Exhibit RC-2 [TAT.001.016.0646] and Tab 39.9 of Exhibit RC-1 [TAT.001.016.0660]**. The approvals applicable to Tatts in New South Wales are found at **Tabs 10.7 to 10.15 of Confidential Exhibit RC-2 [TAT.001.016.0663], [TAT.001.016.0668], [TAT.001.016.0801], [TAT.001.016.0806], [TAT.001.016.0811], [TAT.001.016.0814] [TAT.001.016.0817] [TAT.001.016.0820], [TAT.001.016.1098] and Tabs 39.10 to 39.15 of Exhibit RC-1 [TAT.001.016.0823], [TAT.001.015.0596], [TAT.001.016.0673],**

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[TAT.001.016.0705], [TAT.001.016.0737] and [TAT.001.016.0769]. The approvals and conditions applicable to Tatts in Victoria are found at **Tab 10.16 to 10.19 of Confidential Exhibit RC-2** [TAT.001.016.0864], [TAT.001.016.0854], [TAT.001.016.0878], [TAT.001.016.0879] and **Tab 39.16 to 39.17 of Exhibit RC-1** [TAT.001.016.0856], [TAT.001.016.0880].

***Taxes and fees paid by Tatts and the flow-through to governments and the racing industry***

98. The Wagering Tax and Industry Fee Spreadsheet at **Tab 9 of Highly Confidential Exhibit RC-3** [TAT.001.015.0851] includes, for each of FY12 to FY16:
- (a) the wagering taxes paid by Tatts to Governments in Queensland, South Australia, Northern Territory and Tasmania;
  - (b) the Product Fees paid to racing industry bodies in those States and Territories; and
  - (c) the Race Field Fees paid to the approving bodies named in the Race Field Fee Schedule.

99. The Wagering Tax and Industry Fee Spreadsheet shows total payments to the government and racing industry in the States and Territories for FY15 and FY16 as follows:

FY16

- (a) **[HIGHLY Confidential to Tatts]** [REDACTED] in wagering taxes paid to State and Territory Governments in FY 2016, being:
  - (i) **[HIGHLY Confidential to Tatts]** [REDACTED] paid by UBET QLD;
  - (ii) **[HIGHLY Confidential to Tatts]** [REDACTED] paid by UBET SA;
  - (iii) **[HIGHLY Confidential to Tatts]** [REDACTED] paid by UBET NT; and
  - (iv) **[HIGHLY Confidential to Tatts]** [REDACTED] paid by UBET TAS;
- (b) **[HIGHLY Confidential to Tatts]** [REDACTED] in product fees paid to racing industry bodies (excluding race field fees) in FY16, being:
  - (i) **[HIGHLY Confidential to Tatts]** [REDACTED] paid by UBET QLD;
  - (ii) **[HIGHLY Confidential to Tatts]** [REDACTED] paid by UBET SA; and
  - (iii) **[HIGHLY Confidential to Tatts]** [REDACTED] paid by UBET NT;
- (c) **[HIGHLY Confidential to Tatts]** [REDACTED] in race field fees in FY16;

FY15



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- (d) [HIGHLY Confidential to Tatts] [REDACTED] in wagering taxes paid to State and Territory Governments in FY15, being:
- (i) [HIGHLY Confidential to Tatts] [REDACTED] paid by UBET QLD;
  - (ii) [HIGHLY Confidential to Tatts] [REDACTED] paid by UBET SA;
  - (iii) [HIGHLY Confidential to Tatts] [REDACTED] paid by UBET NT; and
  - (iv) [HIGHLY Confidential to Tatts] [REDACTED] paid by UBET TAS;
- (e) [HIGHLY Confidential to Tatts] [REDACTED] in product fees paid to racing industry bodies (excluding race field fees) in FY15, being:
- (i) [HIGHLY Confidential to Tatts] [REDACTED] paid by UBET QLD;
  - (ii) [HIGHLY Confidential to Tatts] [REDACTED] paid by UBET SA;
  - (iii) [HIGHLY Confidential to Tatts] [REDACTED] paid by UBET NT [HIGHLY Confidential to Tatts] [REDACTED]  
[REDACTED] and
- (f) [HIGHLY Confidential to Tatts] [REDACTED] in race field fees in FY15.

100. Historically the wagering tax regime imposed by States and Territories provided for tote operators to pay taxes to the Governments which authorised the totalisator activities. The tax revenue paid to Government was, in part, paid to racing bodies, to promote the development of the racing industry in the State or Territory.

101. These racing industry funding regimes were designed at a time when all betting occurred either in person or by telephone. Now, with the increased popularity of digital betting, there are many bookmakers who are able to take bets from punters located in any State or Territory, but pay lower taxes to Government, by obtaining a licence in the Northern Territory, than Tatts pays in the jurisdictions where it holds wagering rights. They pay no Product Fees (see paragraph 65). This reduces the portion of wagering revenue that flows through to the racing industry that sustains wagering.

102. My understanding is that Race Fields Fees were introduced in an attempt to ensure adequate funding of the racing industry and prevent online bookmakers from 'free-riding' by taking bets on the races but paying no compensation to the industry that supplies those races. By way of example, the Harness Media Centre in New South Wales says on its website page entitled "Race Fields and Corporate Wagering Operators" (Tab 40 of Exhibit RC-1 [TAT.001.015.0638]) that race fields legislation was "introduced to target wagering operators



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*who were profiting from using NSW racing product without making a contribution to the industry".*

103. My confidential submission to the Review on behalf of Tatts dated 15 November 2015 (**Tab 1 of Highly Confidential Exhibit RC-3 [TAT.001.015.0810]**) stated (at pages 1-2):

**[HIGHLY Confidential to Tatts]**



The state of affairs described in that extract from my letter is still current today, except that the figures in relation to ongoing economic contributions will have remained consistent or increased since that letter was written in November 2015.

104. As a general observation, given that fees payable by Tatts to racing industry bodies are calculated by formulae based on wagering revenues, the greater the revenues the more funds the racing industry will receive.

**Section G – The identity of Tatts’ competitors in its wagering business, and the nature of competition in that business**

105. The effect of the licensing arrangements described in Section E is that Tatts has (at present) the exclusive rights to conduct wagering businesses in Queensland, South Australia, the Northern Territory and Tasmania from retail operations off-course, as well as non-exclusive rights to conduct retail wagering operations on-course (at racetracks). Tabcorp has equivalent rights in New South Wales, Victoria and the ACT. RWWA has equivalent rights in Western Australia.
106. Consequently, Tabcorp and Tatts do not compete with each other in their retail wagering businesses. Neither offers wagers to customers at retail sites outside the areas for which they are exclusively licensed (that is, Queensland, Tasmania, South Australia and Northern Territory for Tatts; and Victoria, New South Wales and the Australian Capital Territory for Tabcorp).
107. Tabcorp and Tatts do compete with each other throughout Australia in their digital wagering businesses. In doing so, they each face substantial competition from corporate bookmakers, many owned by substantial European betting organisations, such as Paddy Power, Betfair, Ladbrokes Coral, Bet 365 and William Hill. Like Tatts' and Tabcorp's, the corporate bookmakers' wagering businesses (like Tatts and Tabcorp) involve both race and sports betting (and occasionally non-sport events). Unlike Tatts' and Tabcorp's, their businesses are conducted exclusively via digital channels and by telephone via call centres. Over the last decade, Tatts has lost market share in its wagering business to corporate bookmakers, as I recorded in 2013 (see paragraphs 133(l), 143 and 144) and as has continued since then (see paragraphs 125 to 128).
108. As set out in paragraph 50 above, Tatts derives the vast majority of its digital and telephone wagering turnover from the States and Territory in which it holds the exclusive retail licence, even though digital and telephone customers can bet with Tatts from any Australian State or Territory or overseas. This is largely because digital and telephone customers are directed to Tatts by the retail outlets they attend (which only exist in Tatts jurisdictions), Tatts advertises its website/app and telephone service more extensively in its own jurisdictions, and Tatts doesn't have a retail presence in the other states so people are less aware of its brand there. Consistent with the approach we have adopted, I do not see Tabcorp (except its corporate bookmaker subsidiary, Luxbet) advertising to customers in the Tatts states as heavily as the corporate bookmakers do. Corporate bookmakers have been more effective in their efforts to win customers from the Tatts home jurisdictions, partly because of the competitive advantages I describe in paragraphs 145 to 149 below. Those advantages allow them to, and they do,

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conduct extensive advertising campaigns, offer many promotions (e.g. 'money back' offers), and offer a wider product range than Tatts is able to under its State and Territory licences. For these reasons, I see the corporate bookmakers as very effective competitors of Tatts in digital and telephone wagering, and more so than Tabcorp, as they are targeting all States and Territories, whereas Tabcorp may have less of a competitive presence in the jurisdictions where Tatts does most of its business.

109. In 2008, the High Court handed down its decision in *Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418. Betfair is a betting exchange, that is, an intermediary that accepts 'back bets' (a bet that a certain outcome will happen) as long as they are matched by another customer's 'lay bet' (a bet that the specified outcome will not happen) on the same odds. Betfair challenged laws that banned Western Australian residents from placing bets using its online betting exchange. The High Court held that the laws contravened section 92 of the Constitution by imposing protectionist burdens on interstate trade. After that decision, State Governments removed many of the legislative restrictions on advertising in a State or Territory in which the wagering operator is not licensed.
110. Since that High Court decision, there have been a number of important developments affecting Tatts' wagering business, associated with corporate bookmakers becoming licensed to conduct business in Australia and targeting consumers Australia-wide, including through substantial advertising in print, radio, television and other media (e.g. billboards), and promotions to attract/retain customers (see paragraphs 147-148); and an increase in digital wagering. These trends and some of their consequences are described in Section H. One of these is the significant competition that Tatts' wagering business faces from corporate bookmakers, which is mentioned in paragraphs 107 to 108 above and described further in Section I.
111. Tatts cannot offer fixed price wagering without regard to the odds offered by corporate bookmakers for the same, or a similar, bet. If Tatts' odds are lower than those offered by corporate bookmakers, I have no doubt that Tatts would quickly be regarded by punters as uncompetitive. **[Confidential to Tatts]** [REDACTED]  
[REDACTED] Corporate bookmakers have the ability to operate their business on lower margins (and therefore offer 'more competitive' prices to customers) because they are not subject to the same funding obligations as Tatts, as I explain in paragraphs 65, 84 to 85, 145(b) and 146.
112. The Illegal Wagering Report (**Tab 2 of Exhibit RC-1 [TAT.001.015.0192]**) noted the increase in online wagering. It recorded that in 2013-14 turnover (total bets) on racing and sports wagering was \$23.4 billion (p 39), and that online wagering had increased by 289% since 2004, or 15% per year (p 46).
113. The Report also noted (at page 50) that since 2009 a number of offshore wagering providers "have come onshore as part of the broader market consolidation of the Australian industry".



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The Report noted (pages 50 -51) the acquisition or commencement of Australian wagering operations in the years 2009 to 2014 by various major betting operators, most of which were based overseas:

- (a) Paddy Power (Ireland) acquired 51% of Sportsbet in July 2009 and the remaining 49% in 2011;
- (b) bet365 (United Kingdom) started Australian operations in June 2012;
- (c) William Hill (United Kingdom) acquired Sportingbet Australia (which had acquired Centrebet in 2011) in March 2013 and Tom Waterhouse in August 2013;
- (d) Ladbrokes (United Kingdom) acquired Bookmaker.com.au in September 2013 and Betstar in April 2014; and
- (e) Crown (Australia) acquired Betfair Australia in August 2014.

114. The Victorian Government's submission to the Review (**Tab 32 of Exhibit RC-1 [TAT.001.015.0127]**) included at page 9 (citations omitted):

### ***"Trends in online wagering***

*The development of online and mobile technology has fundamentally changed the gambling market around the world, including in Australia. Consumers are interacting with racing and sports betting products in new, more mobile ways. Wagering consumption is increasingly online/mobile and increasingly on fixed odds.*

*Many consumers have transitioned from using telephone and land-based outlets to online channels, with 40 per cent of Australia wagering (including both sport and races) taking place online.*

*Estimates in 2014 indicate that Australian online wagering generated approximately \$2.1 billion in gambling industry revenue.*

*Globally, online wagering is estimated to be the largest online gambling product, accounting for 53 per cent of the market, followed by casino games (25 per cent), poker (14 per cent), and bingo (7 per cent).*

*Online platforms and the ease of creating wagering accounts enables Victorian consumers to gamble with WSPs [Wagering Service Providers] online in Australia and offshore. It is not an uncommon practice for consumers to hold multiple active betting accounts.*

*Over the past ten years, there have also been changes to the way Victorians gamble on racing and sport. Since 2004-05, expenditure (player loss) on sports*

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*betting in Victoria has increased from approximately \$24 million from turnover of \$180 million to over \$213 million from turnover of \$1.3 billion in 2013-14.*



*In this period, expenditure (player loss) on racing in Victoria decreased from \$606 million (turnover of \$4.0 billion) in 2004-05 to \$571 million (turnover of \$3.1 billion) in 2013-14. It should be noted that these figures do not include data for bookmaker turnover (on-course and off-course) in 2012-13 and 2013-14 due to unavailable data. In 2011-12, Victorian bookmaker turnover was \$495 million."*

115. Whilst I cannot vouch for the accuracy of the figures recorded in this quotation, the observations recorded in the first, second and fifth paragraphs are trends which I have observed, and consider to be accurate.

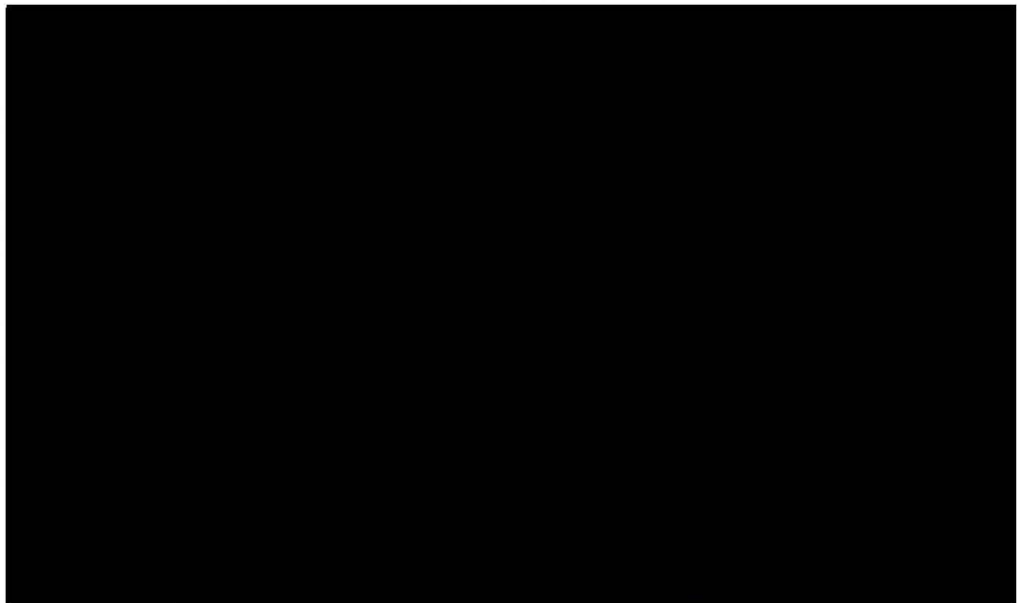
116. The AWC's submission to the Review (**Tab 23 of Exhibit RC-1 [TAT.001.015.0044]**) records (p 8):

*"While there has been only moderate growth in wagering turnover from 2007, there has been a material shift in the betting channels where that spend is occurring. Improved technology and better innovation has seen a shift from the more traditional wagering channels (i.e. retail outlets, on-course and phone operator) to online channels such as the internet, smart phones and tablet devices."*

I agree with the observation in the first sentence of this statement.

117. In **[HIGHLY Confidential to Tatts]**   
, I drew some conclusions from Tatts' wagering experience and in this regard I made the following comments on competition from online wagering operators:

**[HIGHLY Confidential to Tatts]**



(Emphasis added)

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118. The views recorded in this quotation are ones which I continue to hold and are based on my observation of trends affecting Tatts' wagering business.
119. The "synthetic tote" product referred to in bold in the above quotation enables corporate bookmakers to compete with both Tatts and Tabcorp in tote betting, by offering customers odds that are the same as, or better than, those which Tatts and Tabcorp offer using their totalisator products. In **[HIGHLY Confidential to Tatts]** [REDACTED] I described these products as a "direct substitute product to the tote wagering which Tatts is licensed to conduct", and I still hold that opinion now.
120. As I recorded in my **[HIGHLY Confidential to Tatts]** [REDACTED] I understood that some corporate bookmakers derived more than 80% of their race betting revenues from these wagering products.
121. Corporate bookmakers offer these tote products without conducting a totalisator, or paying States or Territories the licence fees which they levy to authorise lawful totalisator betting, or the taxes which Tatts and Tabcorp pay on totalisator betting activities. They only pay the Northern Territory tax on fixed price betting which was capped at \$575,000 in FY2016 (see paragraphs 84 to 86), Race Field Fees and Sports Control Body Fees (see paragraphs 63 and 64), all of which are also paid by Tatts. The Queensland ASX Announcement (**Tab 4 of Exhibit RC-1 [TAT.001.015.0455]**), in the second quoted paragraph, recorded my views as to the activities of corporate bookmakers, stating: "Our wagering franchise is now well positioned to fight back against the predatory operators who have for too long exploited the fiscal imbalance that has existed in the Australian wagering landscape".
122. Tabcorp's submission to the Review (**Tab 3 of Exhibit RC-1 [TAT.001.015.0146]**) enclosed a letter it wrote dated 10 August 2015 to an earlier review by the Australian Communications and Media Authority. Page 2 of that letter recorded:
- "The gambling entertainment industry has changed significantly since the ACMA was formed in 2005 and certainly since the IGA [Interactive Gambling Act 2001 (Cth)] became law in 2001.*
- Increased competition from corporate bookmakers and unregulated offshore wagering regulators, in addition to the introduction of new technologies such as the smart phone, means that Australian customers today can consume demonstrably more gambling products anywhere in the world, at almost any time of the day, from multiple providers. This dynamic market has become increasingly complex with different gambling regulations in each Australia jurisdiction."*
123. I agree with the above statement.



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124. Corporate bookmakers also compete with Tatts and Tabcorp in online fixed price sports and race betting; described in more detail in Section I.
125. Tatts' internal analysis and estimates of the turnover (total bets wagered) and revenue (gross profit to operator, that is turnover after deducting payments to successful wagerers) for FY 15 and FY 16 (Tab 12 of **Highly Confidential Exhibit RC-3 [TAT.001.015.0751]**) shows Sportsbet turnover in Australia in FY16 at \$4.177 billion exceeding Tatts' turnover at **[HIGHLY Confidential to Tatts]** [REDACTED], though Tatts derived greater revenue, \$609.9 million to Sportsbet's \$473.2 million. **[HIGHLY Confidential to Tatts]** [REDACTED]



126. That internal analysis also shows that:
- (a) in FY16 total turnover in Australia for Sportsbet, Bet365, William Hill and Ladbrokes was \$10.24 billion;
  - (b) digital turnover in Australia in FY16 was:
    - (i) **[HIGHLY Confidential to Tatts]** [REDACTED] for Tatts;
    - (ii) \$1.512 billion for Ladbrokes;
    - (iii) \$4.177 billion for Sportsbet;
    - (iv) \$2.500 billion for Bet365; and
    - (v) \$2.046 billion for William Hill; and
  - (c) growth in digital turnover in Australia from FY15 to FY16 was **[Confidential to Tatts]** [REDACTED] for Tatts, +62.9% for Ladbrokes, +38.7% for Sportsbet, +21.4% for Bet365 and -19.5% for William Hill.

127. These figures were derived from the published records on the Australian wagering operations of listed corporate bookmakers which compete with Tatts for turnover from sports and race betting, together with assumption/estimates made by Tatts.

128. When read with the analysis in Figure 28 on page 13 of **[Confidential to Tatts]** [REDACTED]  
[REDACTED]

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[REDACTED] (see paragraphs 132 and 133(l) below), those figures show that:

- (a) Tatts' market share reduced from [HIGHLY Confidential to Tatts] [REDACTED] in FY12 to [HIGHLY Confidential to Tatts] [REDACTED] in FY16;
- (b) Sportsbet's market share increased from [Confidential to Tatts] [REDACTED] in FY12 to [Confidential to Tatts] [REDACTED] in FY16; and
- (c) the combined market share of the corporate bookmakers increased from [Confidential to Tatts] [REDACTED] in FY12 to [Confidential to Tatts] [REDACTED] in FY16, whilst the combined market share of Tatts, Tabcorp and Government-owned wagering operators decreased from [HIGHLY Confidential to Tatts] [REDACTED] in FY12 to [HIGHLY Confidential to Tatts] [REDACTED] in FY16.

129. If it becomes law, I do not think the *Interactive Gambling Amendment Bill 2016* (Cth) referred to in paragraph 57 above will have a significant impact on the competition which Tatts faces for wagering activity. Tatts and (to my knowledge) Tabcorp have never offered 'click to call' in-play betting, and the corporate bookmakers ceased doing so in October 2016, so the prohibition on that activity will not materially affect the operations of Tatts or its competitors. The volume of in-play betting transactions being made with the corporate bookmakers through their 'click to call' offerings up to October 2016 was a minor element of their betting activity. As such the regulatory change will not significantly alter the current betting landscape in Australia. The prohibition on unlicensed wagering may cause some unlicensed operators to cease offering wagering to Australian customers, in which case those customers will be able to obtain those services from Tatts, Tabcorp or any of the licensed corporate bookmakers. Alternatively, the unlicensed bookmakers may elect to obtain a licence so as to continue offering wagering to Australian customers.

130. I am also aware of recent media commentary to the effect that the corporate bookmaker TopBetta Holdings Limited (licensed in the Northern Territory and headquartered in New South Wales) is launching (via a subsidiary The Global Tote Limited) a new wholesale-only tote product which it claims will enable licensed wagering operators to participate in a global pool through their existing online channels - see the TopBetta ASX announcements of 16 September 2016 (**Tab 41 of Exhibit RC-1 [TAT.001.015.0819]**) and 3 November 2016 (**Tab 42 of Exhibit RC-1 [TAT.001.015.0816]**). I understand that Ladbrokes, one of the biggest corporate bookmakers, which currently offers only fixed price and tote derivative products, has agreed to participate in this offering (see TopBetta ASX announcement dated 1 December 2016 at **Tab 43 of Exhibit RC-1 [TAT.001.015.0805]**).

## Section H – Significant trends in the wagering industry in Australia since 1999

131. As Chief Executive Officer of Tatts, I constantly monitor trends in wagering both in Australia, and overseas, to understand the potential effect of trends on Tatts' wagering and other businesses.
132. [HIGHLY Confidential to Tatts] [REDACTED]
133. [HIGHLY Confidential to Tatts] [REDACTED] a number of trends which I had observed and which I considered had affected Tatts' wagering business, including:
- (a) A reduction in wagering turnover from telephone wagering and an increase in digital turnover (p 1); I observed (p 2) that the trend from telephone to digital turnover would continue, and it has;
  - (b) From FY 06 to FY 13 there had been a significant movement to fixed price race betting from tote betting (p 3);
  - (c) Since December 2002 there had been a long-term decline in participation in all forms of gambling, which accelerated after the Global Financial Crisis, except for sports betting, where there had been growth in participation levels (p 3 – 4);
  - (d) Participation in race betting had declined since December 2002, whilst participation in sports betting had grown (p 4 - 5);
  - (e) Customers participating in sports betting tended to transact more frequently than race bettors, and that trend was expanding (p 5);
  - (f) From December 2002 to March 2013 expenditure on race betting had increased by 22% and sports betting by 111% (p 5). In the period from 2008 to March 2013 Tatts' turnover in racing grew by 12.9% and its turnover in sports betting grew by 49.1% (p 5);
  - (g) Sports bettors have a younger age profile than race bettors (p 5);
  - (h) Attendances at TABs and on-course retail outlets were declining and digital wagering was increasing with a dramatic growth in internet betting (p 6);
  - (i) Tatts' customers were switching from tote to fixed price for win/place bets. The shift had adversely affected the attractiveness of Tatts win/place pools for "minor codes" during less popular meets (p 8). This trend is further explained in paragraphs 169 to 173;



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- (j) [Confidential to Tatts] [REDACTED]  
[REDACTED]
  - (i) [REDACTED]
  - (ii) [REDACTED]
  - (iii) [REDACTED]
  - (iv) [REDACTED]
  - (v) [REDACTED]
- (k) I noted that each of Sportsbet and William Hill were offering a synthetic tote product of the kind referred to in paragraph 117 to 119 – Sportsbet the "Top Tote" offer – giving the best of the three TABs or starting price, whichever is better; and William Hill "Maxidiv" - best of three totes or starting price (p 12); and
- (l) When comparing market share between 30 June 2008 and 30 June 2012 (Total wagering market share by turnover) Tatts had lost share, and Sportsbet and Sportingbet had gained share and together held a bigger market share than Tatts (p 13, Figure 28).

134. I believe that the trends which were identified in [HIGHLY Confidential to Tatts] [REDACTED] and summarised in paragraphs 133(a) to (i) above are still applicable to Tatts' wagering business today, in particular the:

- (a) growth of digital betting as opposed to retail/telephone betting;
- (b) growth of sports betting as opposed to racing betting; and
- (c) growth of fixed price race betting as opposed to totalisator betting.

135. The trends are illustrated in the Wagering Turnover Spreadsheet referred to in paragraph 48 above (Tab 7 of Highly Confidential Exhibit RC-3 [TAT.001.015.0809]). It shows:

- (a) the growth of digital betting as opposed to retail/telephone betting, in that:
  - (i) digital turnover across the four UBET entities grew by [HIGHLY Confidential to Tatts] [REDACTED] from [HIGHLY Confidential to Tatts] [REDACTED] in FY12 to [HIGHLY Confidential to Tatts] [REDACTED] in FY16;
  - (ii) telebet turnover decreased by [HIGHLY Confidential to Tatts] [REDACTED] from [HIGHLY Confidential to Tatts] [REDACTED] in FY12 to [HIGHLY Confidential to Tatts] [REDACTED] in FY16;

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- (iii) retail turnover decreased by [HIGHLY Confidential to Tatts] [REDACTED] from [HIGHLY Confidential to Tatts] [REDACTED] in FY12 to [HIGHLY Confidential to Tatts] [REDACTED] in FY16;
- (b) the growth of sports betting as opposed to racing betting, in that sports turnover grew by [HIGHLY Confidential to Tatts] [REDACTED] from [HIGHLY Confidential to Tatts] [REDACTED] in FY12 to [HIGHLY Confidential to Tatts] [REDACTED] in FY16) whilst racing turnover grew only by [HIGHLY Confidential to Tatts] [REDACTED] (from [HIGHLY Confidential to Tatts] [REDACTED] in FY12 to [HIGHLY Confidential to Tatts] [REDACTED] in FY16);
- (c) the growth of fixed price betting as opposed to totalisator betting - fixed price turnover grew by [HIGHLY Confidential to Tatts] [REDACTED] (from [HIGHLY Confidential to Tatts] [REDACTED] in FY12 to [HIGHLY Confidential to Tatts] [REDACTED] in FY16) whilst totalisator turnover decreased by [HIGHLY Confidential to Tatts] [REDACTED] (from [HIGHLY Confidential to Tatts] [REDACTED] in FY12 to [HIGHLY Confidential to Tatts] [REDACTED] in FY16).

136. A number of the trends I noted in 2013 are recorded in the extract at paragraph 114 from the Victorian Government's submission to the Review in November 2015 (**Tab 32 of Exhibit RC-1 [TAT.001.015.0127]**). That submission records (at page 9) the following trends similar to those which I had identified in 2013:

- (a) Wagering was increasingly undertaken online or by mobile phones with customers moving from telephone and land-based outlets to digital channels;
- (b) Globally, online wagering was estimated to be the largest online gambling product, accounting for 53% of the market (followed by casino games (25%), poker (14%) and bingo (7%));
- (c) Since 2004 – 2005 sports betting in Victoria had increased from turnover of \$180 million to turnover of \$1.3 billion in 2013-14; and
- (d) Over the same period, race betting in Victoria had decreased from a turnover of \$4 billion in 2004-2005 to \$3.1 billion in 2013-2014.

137. The Racing Australia Fact Book 2015-16 (**Tab 44 of Exhibit RC-1 [TAT.001.013.3079]**) at Tables 73 – 81 records statistics on Australian thoroughbred wagering turnover for 2015/16 (Table 73) and thoroughbred wagering turnover for each of the Australian States and Territories for 2009/10 to 2015/16 (Tables 74 to 81). Analysis of the figures recorded in Tables 74 - 81 demonstrates trends similar to those which I identified in 2013, in particular:

- (a) declines in wagering on-course, at retail outlets and by telephone;

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- (b) an increase in wagering placed via digital channels in NSW, Victoria, Queensland and Western Australia;
- (c) a decline in totalisator (pari-mutuel) wagering since 2013/14 in Western Australia and since FY2009/10 in all other States and Territories; and
- (d) an increase in fixed price wagering.

Tables 74 – 81 are at **Tab 44** of **Exhibit RC-1 [TAT.001.013.3079]** at [.3142] - [.3144].

138. Analysis of the Real Gambling Turnover statistics in the Australian Gambling Statistics 32nd Edition prepared by the Queensland Government Statistician's Office shows a decline in racing turnover and an increase in sports betting turnover in each State between 2004/05 and 2014/15. That was not the case for the Territories, with the ACT recorded as having a decline in both types of turnover; and the Northern Territory recorded as having an increase in both types of turnover (likely reflecting the rise of the corporate bookmakers licensed in that Territory). The Real Gambling Turnover statistics for each State and Territory are at **Tab 45** of **Exhibit RC-1 [TAT.001.013.0282]**.

139. Tatts' monthly board papers for the months in which directors' meetings are held, routinely include the Group Financial Report which includes analysis of the financial results of the Lotteries, Wagering and Gaming businesses, amongst other financial reporting. The reports on the Wagering business often comment on the movement from tote turnover to fixed price wagering turnover. For example, the report for the meeting of 25 June 2015 (**Tab 14** of **Highly Confidential Exhibit RC-3 [TAT.001.002.0695]**) (p 8), records **[Confidential to Tatts]**

140. The monthly business unit report for Wagering for the Board Meeting of 24 September 2015 (**Tab 15** of **Highly Confidential Exhibit RC-3 [TAT.001.002.1802]**) (p 9) records that

**[Confidential to Tatts]**

The similar report presented with the board papers of 24 June 2016 (**Tab 16** of **Highly Confidential Exhibit RC-3 [TAT.001.003.0368]** at [.0384]) recorded that online sales were **[Confidential to Tatts]**

. The report also recorded:

**[Confidential to Tatts]**

141. For each Board meeting I prepare my CEO's report. When commenting on the wagering revenue derived in the previous month, I often report that the revenue was affected by what I describe as the "*continuing migration from tote to fixed price*". My reports of 24 September

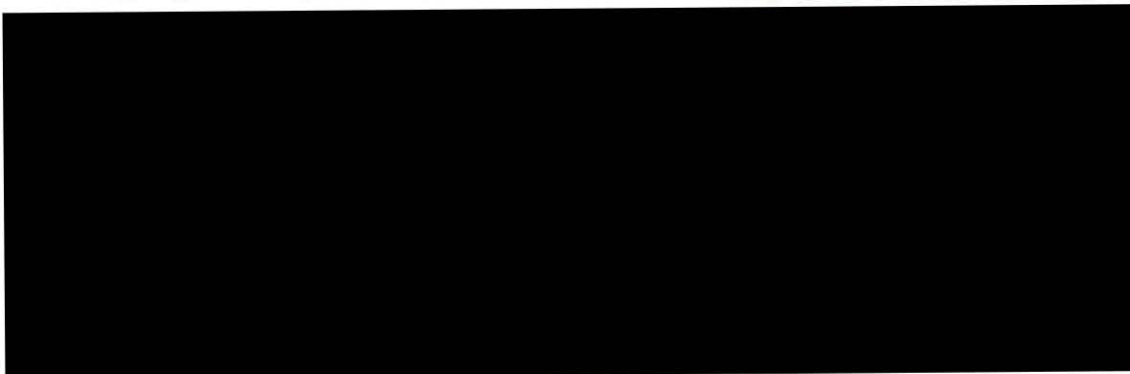


2015, 30 October 2015, 26 November 2015 and 18 February 2016 (at **Tabs 17 to 20** of **Highly Confidential Exhibit RC-3** [TAT.001.002.0341], [TAT.001.002.1034], [TAT.001.002.0406] and [TAT.001.003.0674]) contain statements to this effect.

## **Section I – The role of corporate bookmakers and the competition affecting Tatts' wagering business from corporate bookmakers**

142. I have referred to the competitive activities of corporate bookmakers (paragraphs 110 to 128 above).

143. The corporate bookmakers licensed in Australia have consistently increased their total share of the wagering market by turnover, at the expense of Tatts. **[Highly Confidential to Tatts]**



144. In the period 1 July 2013 to date, that trend has continued. The figures identified at paragraph 125 to 128 show that Sportsbet had a greater wagering turnover in FY16 than did Tatts, notwithstanding that Tatts has exclusive retail operations in four States and Territories whilst Sportsbet's business is wholly digital. Sportsbet's turnover is a result of its competition with Tatts (and Tabcorp and the other corporate bookmakers) in digital racing and sports betting, coupled with extensive advertising (which I elaborate on in paragraphs 147 and 148).

145. Corporate bookmakers enjoy a number of competitive advantages over Tatts. These include:

- (a) As noted in paragraphs 117 - 121 above, the ability to derive substantial race betting revenues by offering "synthetic tote products" which are a direct substitute for tote wagering conducted by Tatts. Corporate bookmakers offer these tote products, with the advantages identified in paragraph 121 .
- (b) Because the major corporate bookmakers, Sportsbet, Bet 365, William Hill and Ladbrokes, all conduct their online wagering businesses in Australia with a sports betting licence issued by the NT Government, the maximum tax they pay on all wagering turnover is \$575,000. The result is that they operate in what I describe as a "*virtually zero tax environment*" which returns circa \$6.5 million in tax to the NT Government on wagers estimated at circa \$8 billion, as I noted in Tatts' letter to Senator Abetz (see paragraph 58 above).

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146. The lower tax rates, coupled with their conduct of substitutable tote wagering products without paying any licensing fees to acquire a totalisator licence, means that their costs of doing business are lower than Tatts'. These lower costs give corporate bookmakers an ability to offer various wagering incentives and discounts to potential customers and to spend more on advertising.
147. Corporate bookmakers engage in substantial advertising in print, radio, television, online and other media (e.g. billboards), and promotions to attract/retain customers. The Illegal Wagering Report (Tab 2 of Exhibit RC-1 [TAT.001.015.0192]) noted (at p 31) the "*significant investment in brand awareness by online operators*". **[Highly Confidential to Tatts]** [REDACTED]  
[REDACTED]
- (a) Tabcorp was being "*out-marketed on Google sponsored links by [the] international competitor set*";
  - (b) Bet365.com had "*strong marketing incentive/promotions to capture new account holders*" and a "*[w]ell-defined brand and [was] utilising smart marketing techniques offline, online (Google) and through display advertising*" but had a "*continued need to build brand in market*". Since 2013 Bet365 has continued to build that brand, including through traditional advertising, strategic sporting sponsorships, promotional bet offers, and online marketing;
  - (c) Sportingbet.com.au (William Hill) had an account sign-up bonus of up to \$200 and a "*continued need to build brand in Australia*". Since 2013 William Hill (sportingbet.com.au) has continued to build its brand position, in particular by 'collapsing' the three discrete brands it acquired in Australia and 'rebadging' those brands as William Hill. It appears to focus its brand positioning activities on traditional advertising, promotional bet offers, and online marketing.]
148. **[Highly Confidential to Tatts]** [REDACTED] the following marketing and brand awareness activities of the corporate bookmakers:
- (a) that William Hill had created 30% of its new accounts in FY12 from "pay per click" marketing with Google (p 19);
  - (b) that 10% of William Hill's new accounts were created from organic searches, suggesting a greater investment in search engine optimisation than Tatts had made at that time (p 19);
  - (c) **[Highly Confidential to Tatts]** [REDACTED]  
[REDACTED] (p 20); and



(d) [Highly Confidential to Tatts]

(p 20).

149. Another advantage of corporate bookmakers licensed in the Northern Territory is that they are not subject to as many restrictions on what betting products they can offer. At the time of preparing this statement, the NT Government had published a list of the sporting and other events that corporate bookmakers licensed in the Northern Territory were authorised to take bets on: <https://nt.gov.au/industry/gambling/bookmaker-licences-and-permits/declared-sporting-events-for-bookmaking> (Tab 46 of Exhibit RC-1 [TAT.001.015.0826]). Tatts' product range in a given State or Territory is limited to products that are approved by the Government or otherwise permitted by its licence in that State and Territory. For example, on 9 June 2016 (Tab 11 of Confidential Exhibit RC-2 [TAT.001.015.1025]) the Attorney General for Queensland declined UBET QLD's request for approval under s 56 of the *Wagering Act 1998* (QLD) to offer fixed price betting on the Australian Federal Election. This meant that Tatts could not offer that bet, even online, to its customers with home addresses in Queensland. By contrast, a number of corporate bookmakers offered this bet, because it was permitted in the Northern Territory where they are licensed. Tabs 47.1 to 47.4 of Exhibit RC-1 [TAT.001.015.0552], [TAT.001.015.0619], [TAT.001.015.0449] and [TAT.001.015.0537] is a selection of web pages recording that Ladbrokes, Sportsbet, William Hill, Betfair, Crownbet and TABtouch (RWWA / WA TAB) offered betting on that election. To date, Queensland has only approved Tatts offering wagering on two non-sporting events - the Academy Awards and Eurovision. By contrast, the "novelty" bets listed on the website of corporate bookmaker Ladbrokes, licensed in the Northern Territory, includes "2017 Australian of the Year", "2017 Golden Globes", "2017 Logie Awards", "Miss Universe 2016", "The Voice Australia", "What happens first in 2017?", "When will the first female Pope be anointed?" and "When will Prince Harry get married?". Screenshots showing these bets on the Ladbrokes website are at Tab 47.5 of Exhibit RC-1 [TAT.001.015.0385]. In 2015/2016 Tatts applied for approval in Queensland to launch a product that would allow customers to wager on 'virtual' (i.e. animated) horse races and sporting events (e.g. darts), and this request was declined by the Queensland government.

## Section J – Steps taken by Tatts to respond to competition from corporate bookmakers

150. Tatts regularly monitors competitors, including corporate bookmakers such as Bet365, William Hill, Sportsbet and Ladbrokes. [Confidential to Tatts]



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

By way of example, my reports of 24 September 2015, 30 October 2015, 26 November 2015 and 18 February 2016 contained this item (Tabs 17 to 20 of Highly Confidential Exhibit RC-3 [TAT.001.002.0341], [TAT.001.002.1034], [TAT.001.002.0406] and [TAT.001.003.0674]).

151.

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

152.

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

153.

[HIGHLY Confidential to Tatts] [REDACTED] a number of "strategic initiatives" which were designed to make Tatts' wagering business competitive and recapture market share in Australia. Those initiatives included:

- (a) A full rebranding to produce a unified brand (namely 'UBET') capable of working seamlessly across Tatts' retail, online and phone wagering operations. The UBET brand was launched in April 2015, as recorded on page 13 of Tatts' 2015 Annual Report (Tab 6 of Exhibit RC-1 [TAT.001.014.0563] at [.0570]) and is currently being rolled out across Tatts' retail, online and telephone wagering operations. Prior to UBET, Tatts operated its wagering business through various brands including TAB, UNITAB, TattsBet, Tatts.com, TOTE and SA TAB;
- (b) Improving Tatts' fixed price sports and racing offer, given that Tatts offered "fewer markets" than corporate bookmakers and was opening those markets for betting later (i.e. closer to the event ) than its competitors. (A "market" in this context is a particular event on which punters can place a fixed price bet, for example "Winner Hopman Cup 2017".) To that end, Tatts:
  - (i) has increased its team of fixed price betting staff from less than 20 to 50 in the last two years, to enable an enhanced 24/7 online fixed price betting service;
  - (ii) has integrated an automated bookmaking engine, supplied by a third party called Sporting Solutions, into Tatts' bookmaking system, to provide a more expansive sports offering. Sporting Solutions' engine provides automated trading, pricing and results and went live in January

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2015. As reported in Tatts' FY15 Annual Report (**Tab 48 of Exhibit RC-1 [TAT.001.014.0563]**) at page 21, the Sporting Solutions platform lifted Tatts' live markets from 5,000 in FY14 to 130,000 at the end of FY15;

- (iii) is increasing the number of products and bet types it offers. This saw Tatts provide a much more expansive coverage of thoroughbred, harness and greyhound racing, together with a vastly improved sports offer (partly as a result of the Sporting Solutions engine) and live or 'in-play' betting options available in store and over the phone; and
  - (iv) introduced technology enabling it to provide promotional offers (such as 'money back' and 'free' bets) in a similar way to the corporates;
- (c) Improving Tatts' digital offering, including developing a new-look website (UBET.com) that is optimised for use on various technologies including smart phones and tablets; and creating a suite of UBET apps for smartphones and tablets that allow customers to view live odds and to cash out pending bets early on certain events before the conclusion of the event. Tatts has also maintained its existing website Tatts.com to cater to punters who prefer to stick with what they know, or prefer its user interface to the UBET one. Other initiatives taken by Tatts in the digital area include: A/B testing (that is, comparing two versions of a website or app to see which one customers prefer); affiliate arrangements to drive traffic to Tatts' digital interfaces; adding a sign-up bonus to gain new customers in eligible jurisdictions; using real-time in-app messaging; and implementing and leveraging the capabilities of a new customer relationship management system;
- (d) Redesign of Tatts' retail outlets to make them more attractive to the next generation of punters and develop the growth of Tatts' sports betting business (acknowledging that this customer grouping is typically more attracted to sports, rather than race betting). This includes enhancing the look, feel and layout of Tatts' physical shopfronts; enhancing its retail product mix; and introducing cash-handling self-service terminals in a wider range of venues to provide cash handling capabilities and ticket-in, ticket-out capabilities (essentially where a customer uses an auto-updating ticket in the self-service terminal instead of cash). An example of a typical new outlet can be seen in the photographs at **Tab 16 of Exhibit RC-1 [TAT.001.015.0847]** of the UBET store in New Farm, Queensland, which opened to the public on 9 April 2015;
- (e) Improving the in-play betting offering at Tatts' retail outlets to enable Tatts to be competitive in the market for in-play betting, the world's fastest growing gambling segment. This was particularly necessary due to the possibility that changes to the *Interactive Gambling Act* may eventually permit in-play betting online (which has not occurred to date, and seems unlikely in the short-term given the Bill referred to in



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paragraph 57). Tatts has been conducting customer acceptance trials of its new UBET Live digital betting platform in its retail outlets, which allows customers to use a dedicated in-store tablet to place in-play bets during sports events;

- (f) Steps were taken to negotiate an extension of the Queensland wagering licence upon more favourable terms including a reduction in wagering tax rates and the continued offset of Race Field Fees against Product Fees payable by Tatts to the Queensland racing industry. These steps were taken to address (partially) Tatts' financial disadvantage relative to corporate bookmakers and enable Tatts to better compete with them;
  
- (g) An increased focus on marketing. The renegotiation of Queensland licensing arrangements referred to in paragraph (f) above provided Tatts with approximately **[HIGHLY Confidential to Tatts]** \$ [REDACTED] per annum for marketing, **[HIGHLY Confidential to Tatts]** [REDACTED]. Tatts was at a competitive disadvantage by having to pay wagering tax and Product Fees at a level that the corporate bookmakers did not. The Queensland ASX Announcement (**Tab 4 of Exhibit RC-1 [TAT.001.015.0455]**) records the change in the tax rates for tote and fixed price racing and sports wagering. Tatts established a wagering marketing team with an expanded budget when it launched UBET in April 2015. Specific marketing initiatives have included:
  - (i) engaging in traditional marketing activities to launch and build the UBET brand, including by TV advertisements, pay TV, print media, radio and billboards (such advertising designed to encourage usage whether in store, on the phone or digitally);
  
  - (ii) entering sponsorship partnerships to connect Tatts with customers - for example, in FY16 Tatts committed more than \$1.7 million in sponsorships, including with Melbourne City Football Club (soccer), the V8 Supercar Championship, Port Adelaide Football Club (AFL), Racing Queensland and Tas Racing. UBET also has an exclusive agreement with 'Huffington Post Australia' to promote UBET's brand when content is published in relation to Australian and US sports;
  
  - (iii) targeting specific events such as AFL, NRL, and State of Origin matches, on which corporate bookmakers typically advertise heavily;
  
  - (iv) directly communicating with customers, such as by SMS messages and 'push notifications' within the UBET app; and
  
  - (v) using email and social media advertising (e.g. Facebook) to engage with potential customers and re-engage existing customers;



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- (h) Development of a wagering loyalty program, "UBET+", that provides reward points (convertible to betting dollars) in exchange for betting activity across retail, digital and phone. UBET+ is addressed in more detail in paragraphs 155 to 160 below.
154. As at 1 February 2017, the UBET brand and new retail format had been rolled out in 289 of Tatts' 1,401 retail outlets in Queensland, South Australia, Tasmania and the Northern Territory. By the end of FY17, Tatts plans to have rolled out the new UBET retail format in a further [Confidential to Tatts] [REDACTED] outlets whilst also rolling out the UBET brand across [Confidential to Tatts] [REDACTED] retail outlets. To date, the focus of the rebrand has been on hotels, pubs and clubs (as opposed to agencies and racetracks) and on Tatts' home state of Queensland. The UBET brand is being rolled out progressively in new outlets and by refurbishing existing outlets, and on the internet via [www.ubet.com](http://www.ubet.com) and the UBET app for Apple and Android mobile devices. Tatts also continues to offer wagering under the Tatts brand from the website [www.tatts.com](http://www.tatts.com).
155. Tatts' wagering loyalty program, UBET+, is directed at encouraging repeat business from customers and loyalty to the UBET brand. UBET+ was introduced in April 2015, is available only for digital and telephone betting and is offered to all customers in those channels.
156. Under the UBET+ program, customers receive points for wagering on tote or fixed price products. The points can be converted to notional "betting dollars" which can be used to wager on tote or fixed price products via Tatts' digital or telephone wagering channels. The program provides for membership tiers. The greater the amount wagered on the tote or fixed price product, the more points are awarded. The current membership tiers and reward points are set out in the below table:

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**Tatts' loyalty/rewards program, UBET+**

Membership Tier	Annual Turnover \$ (totalisator and fixed price)	*Points per \$1 spent	
		Totalisator	Fixed Price
Green	0 – 9,999	1	1
Silver*	10,000 – 49,999	1.50	1.50
Gold*	50,000 – 249,999	1.75	1.75
Platinum*	250,000+	2.00	2.00
Diamond 1*	[HIGHLY Confidential to Tatts] [REDACTED]	[REDACTED]	[REDACTED]
Diamond 2*	[REDACTED]	[REDACTED]	[REDACTED]
Diamond 3*	[REDACTED]	[REDACTED]	[REDACTED]
Diamond 4*	[REDACTED]	[REDACTED]	[REDACTED]
Diamond 5*	[REDACTED]	[REDACTED]	[REDACTED]
		Where 1 point = \$0.0025	

Note (by way of example) annual tote betting of \$4m generates [HIGHLY Confidential to Tatts] [REDACTED] points x \$4m] = [HIGHLY Confidential to Tatts] [REDACTED] points or [HIGHLY Confidential to Tatts] [REDACTED] which is [HIGHLY Confidential to Tatts] [REDACTED] of the amount wagered

157. As at 1 February 2017, Tatts had:

- (a) [HIGHLY Confidential to Tatts] [REDACTED] members on UBET+ tier "Diamond 1";
- (b) [HIGHLY Confidential to Tatts] [REDACTED] members on UBET+ tier "Diamond 2";

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- (c) **[HIGHLY Confidential to Tatts]** [REDACTED] members on UBET+ tier "Diamond 3";
- (d) **[HIGHLY Confidential to Tatts]** [REDACTED] members on UBET+ tier "Diamond 4";
- (e) **[HIGHLY Confidential to Tatts]** [REDACTED] members on UBET+ tier "Diamond 5".

158. The introduction of UBET+ in 2015 was motivated by a desire to combat the increased competition from corporate bookmakers, rather than any desire to attract premium punters or compete with Tabcorp. This was referred to in a letter to the South Australian Independent Gambling Authority (one of Tatts' gambling regulators) in October 2014 seeking approval of the UBET+ program. The letter (**Tab 21 of Highly Confidential Exhibit RC-3** [TAT.001.021.0847]) stated in part:

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



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



160. Whilst the UBET+ program includes rewards for customers who wager in large amounts, it was not designed to target those customers known as a 'premium punter' or 'professional punter' or to offer rebates to them in particular.



## Section K – Potential benefits to the public resulting from the merger

161. The merger was announced by an ASX announcement approved by each of Tabcorp and Tatts dated 19 October 2016 (**Tab 49 of Exhibit RC-1 [TAT.001.015.0030] (ASX Announcement)**). The ASX Announcement was accompanied by a presentation summarising the merger (**Tab 50 of Exhibit RC-1 [TAT.001.015.0788] (Presentation)**). As noted under "Governance" on page 5 of the ASX Announcement, the Board of Directors of the merged entity will be the current Tabcorp Board of Directors plus Tatts' Chairman Harry Boon; and the roles of Managing Director / Chief Executive Office and Chief Financial Officer will be held by David Attenborough and Damien Johnston, who currently hold those roles at Tabcorp.
162. Tatts' current plans for its business (including its wagering business) are summarised in its confidential "2017 Playbook" that was distributed to Tatts staff in December 2016 (**Tab 22 of Highly Confidential Exhibit RC-3 [TAT.001.010.0062]**). Tatts' wagering business is addressed at pages 12 to 17 of the 2017 Playbook. Absent the proposed merger, Tatts would continue operating on a "business as usual" basis for the foreseeable future.
163. Page 4 of the ASX Announcement and pages 3 and 12 of the Presentation identified a number of benefits to the Australian racing industry. I approved the ASX Announcement and Presentation and believe, based on my knowledge of the industry, that the merger would produce the benefits to the Australian racing industry listed in the ASX Announcement and Presentation.
164. The ASX Announcement refers to the higher revenues that are expected to be achieved as a result of the merger. Those higher revenues will generate additional funding for the racing industry bodies and governments through operation of the arrangements described in the Wagering Tax and Industry Fee Schedule (**Tab 9 of Confidential Exhibit RC-2 [TAT.001.015.0763]**). The ASX Announcement records an expectation of at least \$50 million per annum in additional funding. to racing industry bodies throughout Australia. I expect that additional revenues to State and Territory racing bodies will advantage those bodies and their members which include regional racing clubs throughout Australia and the local communities and economies in which those clubs operate.

## Section L – Pooling services and bidding for wagering licences

### *Pooling*

165. I have referred to pooling in paragraphs 35 and 36, and to the three tote pools which currently exist in Australia, Tatts' UBET pool, Tabcorp's SuperTAB pool and Tabcorp's NSW pool. When I refer to a wagering operator providing "pooling services", I mean that it allows other totalisator operators to participate in its pool. This is referred to as 'pooling' or 'co-mingling' and results in a larger, more stable pool into which customers can bet. By 'stable', I mean that the

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odds are impacted less by larger bets, which can significantly alter the resultant odds in a smaller pool.

166. Totalisator wagering in Western Australia is licensed to and operated by the Western Australian Government through RWWA.
167. RWWA's totalisator pool is comingled in Tabcorp's SuperTAB pool (see paragraph 78). The SuperTAB pool pools totalisator wagers placed with Tabcorp in Victoria and the ACT, with RWWA in Western Australia and with several overseas totalisators. Tabcorp's NSW pool pools totalisator wagers placed with Tabcorp in NSW and with some international totalisators but no other State or Territory totalisators. RWWA is the only totalisator operator in Australia which acquires pooling services. It did so in 2012 by a pooling agreement with Tabcorp which will expire in 2024.
168. Tatts does not offer participation in its pool to Australian entities outside the Tatts Group. **[HIGHLY Confidential to Tatts]** [REDACTED]  
[REDACTED] ITSP is a protocol for the sharing of betting information between totalisator systems hosted by two or more different operators. It allows the systems to communicate with each other so that bets placed with either system go into the same totalisator pool. **[HIGHLY Confidential to Tatts]** [REDACTED]  
[REDACTED] RWWA, the only potential acquirer of pooling services in Australia, is contracted to Tabcorp until 2024.
169. As stated in paragraph 133(i) above, over the last decade and as a result of competition from corporate bookmakers, the liquidity of the pools (the total funds held) has been declining. The decline is the result of the trend from tote to fixed price wagering described in paragraphs 133(b), 133(i), 135(c), 137(c) and 139-141. As noted in paragraph 135(c), Tatts' totalisator turnover decreased by **[HIGHLY Confidential to Tatts]** [REDACTED] from FY12 to FY16 whilst its fixed price turnover grew by **[HIGHLY Confidential to Tatts]** [REDACTED]. Tatts' half-yearly results published on 16 February 2017 included an Investor Presentation (**Tab 8 of Exhibit RC-1 [TAT.001.015.0959]**) which recorded (at page 9) a 9.5% decline in totalisator ('pari-mutuel') revenue and an 8.4% increase in fixed price revenue from H1 FY16 to H1 FY17.
170. If this trend continues, and it likely will, it could lead over time to the continued decline of tote betting in Australia, resulting in tote betting not being offered on all race meetings, particularly



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minor codes with pool volumes under, say, \$5000. The speed and likelihood of this happening will be reduced if the three tote pools merge into one so as to create a bigger, more viable pool. The bigger the tote pool, the more stable and attractive is tote betting. Conversely, small and fragmented pools will continue to decline as the size of the pool draws punters away from tote betting.

171.

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

172.

On some regional race meetings, the tote pool is so small that it discourages punters from betting on the tote. If the pool is \$2,000, a bet of \$200 could have a large (and adverse) effect on the tote odds. This reduction in odds would cause a punter to choose a fixed price bet over a tote bet. I referred to this in **[Confidential to Tatts]** [REDACTED]

173.

Tatts has since introduced minimum pool guarantees on some selected races, by which it tops up the pool to a minimum amount, say, \$5,000, to make tote betting more attractive to punters on races that are generating sub-optimal pools. This approach was introduced because pools at minor race meetings were becoming too small to be viable. **[HIGHLY Confidential to Tatts]** [REDACTED]

174.

If tote betting declined to the point where, on some or many events, tote betting was not viable, punters would no longer have a choice between fixed price and tote betting on those events. Without tote betting there could also be no "synthetic tote", so punters would in fact lose two of the three choices they currently have - namely fixed price, tote betting and "synthetic tote" betting - and be left with just fixed price.

175.

Merger of the three pools would promote the viability of tote betting which would ensure that the choice punters now have between tote, synthetic tote and fixed price betting, continues.

176.

If a merger occurred, it would pave the way for the three existing pools (two operated by Tabcorp, one operated by Tatts) to be merged (or any one of Tabcorp's pools (i.e. SuperTAB and NSW TAB) to be merged with Tatts' UBET pool), and this would likely happen more quickly and easily than without a merger. This is because, for example, the pools would all be controlled by the one entity, so the need for protracted negotiations between the operators of



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the pools would be eliminated; and there would be fewer IT systems (and therefore fewer potential complications, e.g. communications outages that can occur when two separate systems are linked using the ITSP protocol) than if multiple entities were implementing a merged pool. There would still be a need for the merged entity to obtain the support of the racing industry in all affected States/Territories and any necessary regulatory approvals. The potential for quicker or easier merger of pools was alluded to in the ASX Announcement and Presentation regarding the merger (**Tabs 49 and 50 of Exhibit RC-1 [TAT.001.015.0030] and [TAT.001.015.0788]**), which:

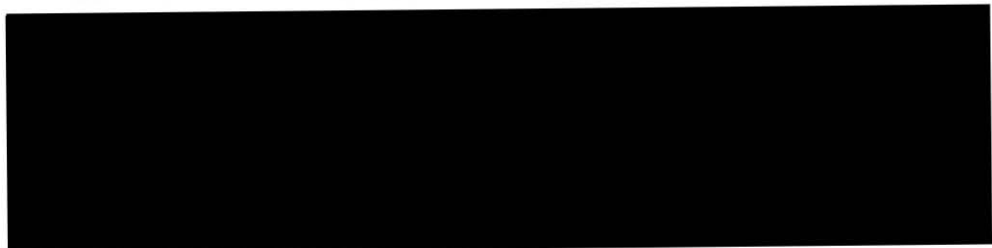
- (a) quoted Tatts Chairman Harry Boon as saying: *"In addition to our shareholders, the benefits of [the combination of Tatts and Tabcorp] are also very clear for the racing industry and for customers who should, in due course and with racing industry support, be able to access deeper and more liquid wagering pools."* (ASX Announcement, page 3)
- (b) quoted Tabcorp Chairman Paula Dwyer as saying: *"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."* (ASX Announcement, page 3)
- (c) referred to *"potential further benefits from the increased attractiveness of merged pools, subject to regulatory and racing industry approvals"* (Presentation, page 8) and *"a pathway to delivering deeper and more liquid betting pools, increasing the attractiveness of pari-mutuel products to customers"* (Presentation, page 14).

I agree with Mr Boon's and Ms Dwyer's statements extracted in (a) and (b) above, and agree that the merger will result in potential further benefits and a pathway to more liquid pools as referred to in (c) above.

***Effect of the merger on potential future licence bids***

**WESTERN AUSTRALIA**

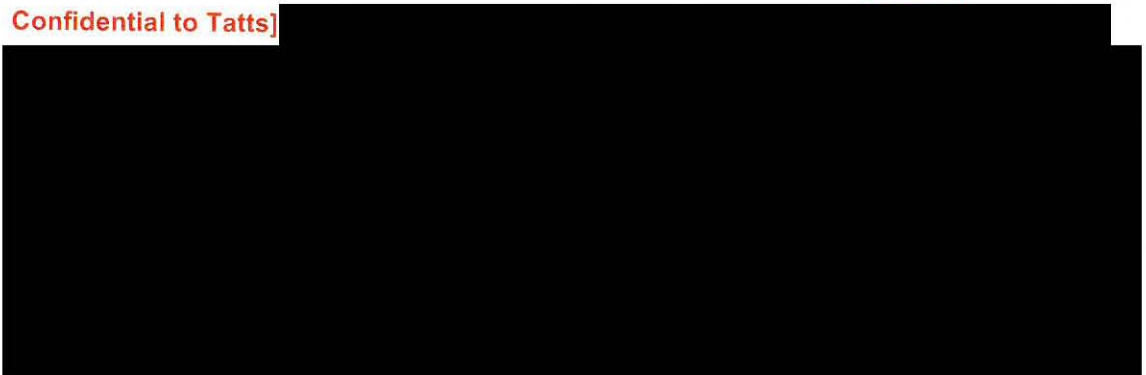
- 177. Page 11/56 of my monthly CEO's report provided to the Tatts Board in its meeting of 26 November 2015 (**Tab 19 of Highly Confidential Exhibit RC-3 [TAT.001.002.0406]**) included the following statement: **[HIGHLY Confidential to Tatts]**





178. At the time of signing this statement, it is unclear if or when a privatisation of RWWA will occur. I am aware that a State election is scheduled for 11 March 2017 in Western Australia. In late January 2017, the Western Australian Racing Representative Group (**WARRG**) released a Position Statement on behalf of the WA racing industry entitled "Racing Towards the 2017 State Election" (**Tab 51 of Exhibit RC-1 [TAT.001.015.0836]**). The Position Statement (at page 5) called on the next State Government to "determine its WA TAB privatisation position in the first half of 2017", and said that "indecision surrounding the proposed privatisation of the WA TAB continues to be a noose around the industry's neck".

179. The 18 February 2016 Tatts Board minutes (**Tab 23 of Highly Confidential Exhibit RC-3 [TAT.001.003.0016]**) at page 3 of 7 record me expressing the view that **[HIGHLY Confidential to Tatts]**



180. If the WA TAB was offered for sale by the Western Australian (**WA**) Government in, say, 2017, and the merger did not proceed, Tatts would in my view likely be interested in bidding for the WA TAB, **[HIGHLY Confidential to Tatts]**

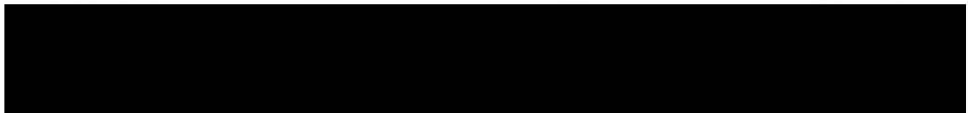


. The structure of any sale is currently unknown.

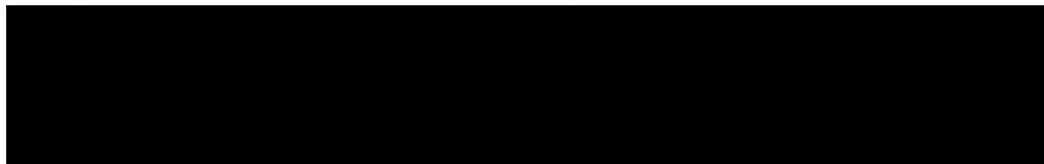
181. **[HIGHLY Confidential to Tatts]**



(a)



(b)




(c)



(d)



182. **[HIGHLY Confidential to Tatts]**  the terms to be sought by the WA Government are currently unknown and will depend on various factors including the Government's budgetary needs, the racing industry's needs and what the Government perceives will be attractive to potential bidders. An alignment between Government and industry is a necessary first step before any negotiations with potential bidders. WARRG has released a Position Statement (see paragraph 178 above), but the WA Government has not yet, to my knowledge, responded or given any indication of the terms on which it will offer the WA TAB for sale. At the time of making this statement, it is still up in the air whether privatisation will go ahead and, if so, when and on what terms.

183. The Position Statement released by WARRG in January 2017 (**Tab 51 of Exhibit RC-1 [TAT.001.015.0836]**) stated (at pages 6 to 8) that WA Racing would work with the State Government to contribute to the development of an "appropriate post-privatisation framework" based on 5 principles:

- (a) "At least no worse off" recurring funding and risk profile;
- (b) Taxation reform / parity with other states so that WA does not remain burdened by the highest wagering tax rates in Australia;
- (c) Guarantee of an Infrastructure fund of "at least \$100M" from the privatisation proceeds;
- (d) "Responsible product expansion" within the existing TAB retail footprint;
- (e) Appropriate operating model with acquirer and industry agreed Principal Racing Authority (PRA) e.g. RWWA governance and integrity framework.

184. The WA Government and WAARG will likely reach an understanding on the structure and terms of any privatisation before RWWA is offered for sale. However, it is far too early to tell if any of the principles set out in WARRG's Position Statement will be adopted by the WA Government and form part of the terms on which the business is offered for sale. For that reason, the publication of WARRG's principles does not assist me one way or another to predict what level of interest Tatts will have in bidding for the WA TAB, or whether it could offer a competitive bid if it did choose to bid.



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185.

[Confidential to Tatts]

[HIGHLY Confidential to Tatts]

186.

[HIGHLY Confidential to Tatts]

Corporate bookmakers and third

parties who might be interested in bidding for WA TAB include William Hill (which conducts RWWA's fixed odds book), CrownBet (which, in addition to its corporate bookmaker activities, runs the Casino in Perth), Ladbrokes (which recently completed its merger with Gala Coral Group to form Ladbrokes Coral, and has been expanding its presence in Australian wagering), and Paddy Power. None of these entities operate their own totalisator pool in Australia.

[HIGHLY Confidential to Tatts]

187.

At **Tab 24 of Highly Confidential Exhibit RC-3 [TAT.001.021.2590]** is a copy of a letter dated 8 August 2012 from Dick McIlwain, my predecessor as CEO/Managing Director of Tatts, to the Western Australian Treasurer and Minister for Racing and Gaming. The letter refers to the announcement that RWWA had entered into a 12-year pooling agreement with Tabcorp. The letter records Mr McIlwain's concern that the pooling agreement may reduce the attractiveness of the WA TAB to potential acquirers, particularly Tatts, if it were to be sold. It states:

[HIGHLY Confidential to Tatts]



188. The factors described in the excerpt from Mr McIlwain's letter are the same factors that would [HIGHLY Confidential to Tatts] [REDACTED]

189. The factors listed in paragraph 181(c) are unknown, but I do anticipate that if Tatts acquired WA TAB, it would [HIGHLY Confidential to Tatts] [REDACTED] [Confidential to Tatts] [REDACTED]

190. The factors referred to in paragraph 181 and elaborated on in paragraphs 182 to 189 are not known to me but would have a critical effect on the competitiveness of Tatts' bid. If I were to assume a sale of WA TAB and no merger, the factors I have described above [HIGHLY Confidential to Tatts] [REDACTED]

191. If I were to assume a sale of WA TAB and a merger, the factors I have described above would still, in my view, [HIGHLY Confidential to Tatts] [REDACTED]. However, it is foreseeable and, in my view, more probable than not [REDACTED] that corporate bookmakers would be encouraged by the WA Government to, and would, bid for WA TAB, against any bid made by the merged entity. As stated in paragraph 186 above, the corporate bookmakers that I consider most likely to do so are William Hill, CrownBet, Ladbrokes and Paddy Power.

192. WA Premier Colin Barnett has been reported as saying that the proposed merger will not affect the price that the WA Government will get for WA TAB. A transcript of the interview in which he said this is at **Tab 52 of Exhibit RC-1 [TBP.015.001.4234]** and records a conversation as follows:

*Question: But it [the merger] would have to impact on price wouldn't it? Because Tabcorp and Tatts- my understanding from what the Treasurer said [indistinct] were the two main likely bidders for TAB. So if they're then one big conglomerate surely that would [indistinct]?*

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*Colin Barnett: [Talks over] No, look I don't [think] it will. There may well be other bidders as well. In fact I'd expect there to be other bidders. But the government will only sell the TAB if it gets the right price for it. And you can be pretty certain what the price is going to be for these assets. Everyone knows the finances and that [sic] put it through the analys[is] - spits out a number and that's what people will bid."*

193. Since 2013, WATAB's fixed price betting has been conducted by Sportingbet Australia Pty Ltd, which is owned by UK company William Hill. This was recorded in an ACCC media release dated 7 March 2013 entitled "ACCC proposes to authorise agreement between RWWA and Sportingbet" (Tab 53 of Exhibit RC-1 [TAT.001.015.0536]). I am not aware of the nature of William Hill's rights under that agreement.

194. If corporate bookmakers were to bid they may, or may not, need access to a pool, depending on the WA Government's requirements for conducting the operations of WA TAB after acquisition. **[HIGHLY Confidential to Tatts]** [REDACTED]

195. Alternatively, the corporate bookmaker bidding could operate its own pool using WA TAB's operations or by purchasing its own totalisator systems; and/or seek, at some point, to join the merged entity's pool or pools. **[HIGHLY Confidential to Tatts]** [REDACTED]

196. If a merger occurred, there is a real prospect in my opinion that the WA Government, competently advised, would structure the bidding process for the sale to ensure there was more than one bidder; by stating, for example, that:

(a) bids were invited from corporate bookmakers, and/or

(b) **[HIGHLY Confidential to Tatts]** [REDACTED]

197. In my opinion, the WA Government has a wide range of options available to encourage bidders, other than Tatts, Tabcorp, or a merged entity. These options include: **[HIGHLY Confidential to Tatts]**

(a) [REDACTED]

(b) [REDACTED]



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- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
  - (i) [REDACTED]
  - (ii) [REDACTED]
- (f) [REDACTED]

**VICTORIA**

- 198. Tabcorp's existing wagering licence is due to expire in 2024 (see paragraph 77(b) above) unless extended by the Victorian Government before then.
- 199. To my knowledge, the Victorian wagering licence is held by Tabcorp, Racing Products Victoria and VicRacing in a joint venture (see paragraph 77(b)) in which each shares joint venture revenues.
- 200. It is uncertain whether the Victorian Government will seek other bidders for the Victorian licence when it is nearing expiry in 2024, or simply negotiate an extension of the licence with Tabcorp. Victoria is Tabcorp's home state, and Tabcorp has various advantages of incumbency which I address in paragraphs 208 to 209 and 211 to 212 below. Historically, when wagering licences (or exclusivity periods of such licences) have come up for expiry, the licences (or exclusivity periods) have ultimately been renewed in favour of the incumbent operator. Since 2011, this has occurred in Victoria, New South Wales, Queensland and the Northern Territory, as summarised in the table below. In New South Wales, the Government extended Tabcorp's exclusivity period without inviting expressions of interest from any other operator. Tatts' licences in Tasmania and South Australia and Tabcorp's licence in the Australian Capital Territory have not yet come up for expiry (and are not due to expire until 2062, 2100 and 2064 respectively), so are not included in the table.

<b>State/Territory</b>	<b>Year</b>	<b>Incumbent licensee</b>	<b>Appointed licensee</b>	<b>Comments</b>

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<b>State/Territory</b>	<b>Year</b>	<b>Incumbent licensee</b>	<b>Appointed licensee</b>	<b>Comments</b>
Victoria - Licence expiry	2011	Tabcorp	Tabcorp	See Tabcorp's Victorian Licence announcement of 19 July 2011 ( <b>Tab 34 of Exhibit RC-1 [TAT.001.001.0089]</b> )
New South Wales - Exclusivity period expiry	2013	Tabcorp	Tabcorp	See Tabcorp's NSW Licence announcement of 10 September 2013 ( <b>Tab 33 of Exhibit RC-1 [TAT.001.015.0447]</b> ).
Queensland - Exclusivity period expiry	2014	Tatts	Tatts	Sports Wagering Licence extended by 61 years to 2098 and retail exclusivity period for Race Wagering and Sports Wagering Licences extended by 30 years to 2044, as reported in the Queensland ASX Announcement ( <b>Tab 4 of Exhibit RC-1 [TAT.001.015.0455]</b> ).
Northern Territory - Licence expiry	2015	Tatts	Tatts	New 20-year exclusive totalisator licence granted, as reported in the NT ASX Announcement ( <b>Tab 28 of Exhibit RC-1</b> )

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State/Territory	Year	Incumbent licensee	Appointed licensee	Comments
				[TAT.001.015.0454].

201. [HIGHLY Confidential to Tatts] [REDACTED]  
 [REDACTED]  
 [REDACTED] The trend from totalisator to fixed price betting is described in paragraphs 133(b), 133(i), 135(c), 137(c) and 139-141 above, and the trend from retail to digital betting is described in paragraphs 133(h), 135(a), 136(a) and 137(a) above. The Victorian wagering licence, in its current form, gives Tabcorp the "sole licence authorising wagering and betting on approved betting competitions via a Victorian retail network", as reported on page 1 of Annexure A to Tabcorp's media release dated 19 July 2011 (Tab 34 of Exhibit RC-1 [TAT.001.001.0089]). [HIGHLY Confidential to Tatts]

[REDACTED]

202. The level of interest that Tatts might have in bidding for any Victorian licence would depend on the changes in the wagering market that are likely to occur over the next 7 years and the state of the market at that time. It is therefore very difficult to predict Tatts' position at that time (assuming no merger). However, my best prediction is that Tatts would likely be interested in bidding for the licence [HIGHLY Confidential to Tatts]

[REDACTED] My reasons for this view are set out in paragraphs 203 to 219 below.

203. On 20 October 2010 Tatts submitted a bid to the Victorian Government for the Victorian Wagering and Betting Licence (Bid). The cover letter to the Bid is at Tab 25 of Highly Confidential Exhibit RC-3 [TAT.001.010.0028].

204. Whilst I did not work for Tatts in 2010, since becoming CEO in January 2013 I have, as part of my role, become aware of that Bid, including the key terms of that Bid and the [HIGHLY Confidential to Tatts]

205. Tab 26 of Highly Confidential Exhibit RC-3 [TAT.001.001.0082] is a copy of the paper supporting the Bid that was submitted to Tatts' Board of Directors in September 2010. Tab 54 of Exhibit RC-1 [TAT.001.012.0004] is a copy of a Victorian government media release dated 29 July 2010 announcing that three candidates - Tabcorp, Tatts and Ladbrokes - had been



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invited to apply for the licence and had been "shortlisted from a strong field of local and international wagering operators". It quoted the Minister for Gaming as saying that "Victoria's wagering and sports betting industry [was] worth more than \$4 billion a year and attracted interest from some of the biggest and most established wagering ventures in the world". Ladbrokes, which had not yet established a presence in Australia by acquiring Bookmaker.com.au and Betstar (see paragraph 113(d) above), subsequently withdrew, citing delays in the tender process.

206. [HIGHLY Confidential to Tatts] [REDACTED]  
[REDACTED] The Board paper (Tab 26 of Highly Confidential Exhibit RC-3 [TAT.001.001.0082]) [HIGHLY Confidential to Tatts] [REDACTED]  
[REDACTED]

207. [HIGHLY Confidential to Tatts] [REDACTED]  
[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

208. [HIGHLY Confidential to Tatts] [REDACTED]  
[REDACTED]

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[REDACTED]

209. The paper noted (at page 4) **[HIGHLY Confidential to Tatts]** [REDACTED]  
[REDACTED]

210. If I were responsible in 2024 for considering a bid by Tatts for the Victorian licence and the licence/structural requirements were consistent with those offered in the last process, I would have the concern recorded in paragraph 208, and **[Confidential to Tatts]** [REDACTED]  
[REDACTED]

211. I would regard Tabcorp as having **[Confidential to Tatts]** [REDACTED]  
[REDACTED] which would include the following:

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

(b) [REDACTED]

(c) Tabcorp agreed to a minimum payment of \$1 billion mentioned in paragraph 216; and **[Confidential to Tatts]** [REDACTED]  
[REDACTED]

212. **[HIGHLY Confidential to Tatts]** [REDACTED]  
[REDACTED]  
[REDACTED] As a public company, Tatts has targeted rates of return for investment, and consideration of risk factors is an important component in assessing any potential investment.

213. If a merger occurred, **[HIGHLY Confidential to Tatts]** [REDACTED]  
[REDACTED]  
[REDACTED] (as bids were received from entities other than Tabcorp and Tatts in 2011 - see paragraph 205 above). Moreover, the Victorian wagering market is big enough that it would be attractive to other potential bidders, for example the corporate bookmakers, as it was in 2011 (see paragraph 205 above).

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214. The potential role of Racing Victoria is also relevant to the identity of bidders in any bidding process for a 2024 licence, assuming the merger occurred. Racing Victoria is a very well-funded and influential entity in the Victorian racing industry. Any licence issued will require the successful bidder to reach arrangements with the Victorian racing industry, as occurred in 2011.
215. Tabcorp's Victorian Licence media release of 19 July 2011 (**Tab 34 of Exhibit RC-1 [TAT.001.001.0089]**) records (page 2) that since 1994 when Tabcorp was granted the Victorian Wagering and Gaming Licences, Tabcorp's joint venture with the Victorian racing industry had returned more than \$4 billion to the three Victorian racing codes, giving Victoria one of the best funded racing industries in the world.
216. That media release records (at page 2 of Annexure A) that the Victorian racing industry was to receive a minimum payment of \$1 billion from Tabcorp in the 3-year period from commencement of the new licence (August 2012) to the end of FY15.
217. When Tabcorp negotiated arrangements with the Victorian racing industry for its Wagering and Betting Licence, it required (and the Victorian Government agreed) that Tabcorp offer financial arrangements no less favourable than those existing in 2011, as recorded in the Victorian Government's 19 July 2011 Press Release (**Tab 34 of Exhibit RC-1 [TAT.001.001.0089]**).
218. **[Confidential to Tatts]** [REDACTED]  
[REDACTED]  
[REDACTED] **[HIGHLY Confidential to Tatts]**  
[REDACTED]
219. **[HIGHLY Confidential to Tatts]** [REDACTED]  
[REDACTED] However, if the Victorian Government elected to run a bidding process, there would likely be bidders other than Tabcorp, Tatts and the merged entity (as there were in 2011), and the Government could structure any bidding process in a way that encouraged those bidders.

Dated 9 March 2017

  
\_\_\_\_\_  
**Robert Michael Sean Cooke**