

Submission to ACCC/Australian Competition Tribunal re Proposed Merger of Tabcorp and Tatts Group (21/03/17)



This submission derives from, and should be read in conjunction with the webpage <http://dodgytimes.com/> which is known to only a small number of people plus RacingNSW, Racing Queensland, the ACCC and presumably the NSW Office of Liquor, Gaming & Racing.

The webpage describes in detail a widespread fraud against punters in which over 50% of the published winning times and sectional times for races in NSW and ACT have been falsified so as to make it impossible for punters to use that information effectively in assessing runners' chances. The misleading times have been generated by falsifying the actual times, fiddling the distances actually raced, and even misstating the condition of the track surface.

In thoroughbred racing, horses are travelling at about 16 metres per second, so even a seemingly small inaccuracy of say 0.2 of a second is very significant (equivalent of just over three metres). Differences of greater than one second are common and occasionally can be around three seconds, and distances tend to be fiddled by between 3 and 15 metres but sometimes more.

Fiddling the actual distances raced will also have affected the results of some of the races in which case some punters and owners are cheated of winnings, whilst other punters and owners will have received winnings or prizemoney they wouldn't have received if the race was run at the advertised distance.

<http://dodgytimes.com/> is not regularly updated. However, the fraudulent activity described therein has continued unabated and the number of races/tracks for which information supplied to punters is being falsified has increased and there is now more variation in the discrepancies.

Although not discussed in <http://dodgytimes.com/>, racing for the six key Queensland tracks (Eagle Farm, Doomben, Gold Coast, Sunshine Coast, Ipswich and Toowoomba) is equally affected by the fraudulent activity. There seems to be no reason to expect that other state racing markets are not also affected.

Tabcorp is suspected of being behind the fraudulent activity due to the following factors:

- The fraudulent activity coincided with Tabcorp's entry into the fixed odds betting market at which point Tabcorp's profitability became tied to the fortunes of the punters. If, collectively, its customers did well then Tabcorp's profitability would suffer.
- Tabcorp is the major beneficiary of the fraudulent activity. Tabcorp's pre-existing exclusive pari-mutuel betting operations in NSW and Victoria made it the biggest betting operation in the country, and Tabcorp was destined to become the market leader in fixed odds betting and had the most to gain from the fraudulent activity.

- Tabcorp through its wholly owned subsidiary Skyracing holds television rights to all thoroughbred racing in Australia (non-exclusive for Victoria), and the coverage of racing was modified using different camera angles in an attempt to conceal the fraudulent activity. Also, there has been a very strong correlation between what would otherwise be very unusual behaviour by Skyracing and the fraudulent activity (discussed in more detail below).
- Skyracing's presence at race meetings and its routine interactions with racing officials and race track staff gives Tabcorp easy access to the people actually creating the falsified data.
- Given Tabcorp's key role in racing in NSW and co-dependent relationship between Tabcorp and RacingNSW over several decades (the majority of funding for racing in NSW comes via Tabcorp), I expect RacingNSW would have set me straight if it had reason to believe that Tabcorp was not behind the fraud. At the time of Tabcorp's takeover of ACTTAB in 2014, the Chief Steward of RacingNSW had advised that they were not aware at what level in the respective organisations the fraudulent activity was being initiated/managed.

Had any other entity been behind the fraudulent activity it would have been shut down relatively quickly in order to uphold the mantra used by racing authorities that 'integrity is paramount in thoroughbred racing'.

Given that the fraudulent activity is also occurring in Queensland which has been a long-term Tatts pari-mutuel franchise, it's possible that Tatts may also be a party to the fraud. Alternatively, through Skyracing, Tabcorp would have easy access to the relevant Queensland racing officials and track staff.

Note, the racing officials involved need only be one of the officials at a race meeting who perform their tasks at each of the race tracks in their region.

The resultant rigged market has enabled Tabcorp to achieve impressive profits from aggressively entering the high-risk fixed odds betting market in which it had no experience. It was also the first of the corporate bookmakers to routinely provide fixed odds betting for provincial and country race meetings where the risks would otherwise be significantly higher again (lower levels of comparative form data vis-a vis metropolitan race meetings).

Relevance to Tabcorp/Tatts Merger Proposal

In 2014 when Tabcorp sought ACCC approval for the acquisition of ACTTAB, the ACCC advised that the 'dodgytimes' fraud against punters didn't fit within the criteria that could be considered in assessing whether the merging of the two entities could have a negative impact on competition in the pari-mutuel betting market.

So, why raise this issue again in the case of a proposed Tabcorp/Tatts merger?

Firstly, it seems inconceivable that a market participant could get away with such widespread fraud over a period of several years in a truly competitive market. The existing market structure simply cannot be competitive. As is apparent from <http://dodgytimes.com/> and is further discussed below, Tabcorp's ownership of Skyracing is the key cause of the competitive defects in the fixed odds betting market for thoroughbred racing and probably also harness and greyhound racing.

Secondly, as much as 'dodgytimes' is a fraud against consumers it is also anticompetitive behaviour. Although the market has been rigged in favour of all bookmakers, without that knowledge, Tabcorp's competitors have not been in a position to compete with Tabcorp (and possibly Tatts) in anywhere near a 'fair' market. Bookmakers need to apply strict risk management disciplines whereas Tabcorp would have known it could step outside of normal prudential boundaries with relative safety. Hence, Tabcorp's surprisingly smooth and successful transition from its risk free pari-mutuel betting operations to becoming the biggest player in the fixed odds betting market.

Thirdly, the nature of the fraud also suggests that Tabcorp already holds a dominant position in the markets in which it operates as bookmaker and/or broadcaster. It has been able to use its uniquely close relationship with the racing industry by reaching into regulatory authorities and racing clubs (at least 30 in NSW) to establish a network of racing officials and race track staff to create the falsified data. It's difficult to imagine any other player in the market having anywhere near the same potential to corrupt the market.

Tabcorp's Ownership of Skyracing

Tabcorp became the owner of Skyracing when Tabcorp was providing only pari-mutuel betting for thoroughbred, harness and greyhound racing, at which time there was no obvious conflict of interest between its gaming interests and the control of racing vision. Tabcorp received a fixed percentage of the pari-mutuel pools irrespective of race results. Quality television coverage would translate to bigger betting pools and increased profits - no risk.

Unlike other markets, the relationship between the bookmaker and its customers is not a win/win scenario but rather is intentionally adversarial. Each party enters into betting transactions with the sole desire to profit at the expense of the other party. What bookmakers and punters see in individual races is a key ingredient in their future pricing and wagering decisions. The control of the broadcasting rights to racing by a bookmaker, let alone the largest bookmaker, is fundamentally contrary to any concept of a fair or competitive market.

That is, now that Tabcorp is also a fixed odds bookmaker there is an unavoidable conflict of interest between its own profitability and providing anything near 'best practice' vision of races to punters and competitors. If Tabcorp provides a service that helps punters and competitors make better decisions it will be to the detriment of Tabcorp's profitability.

Several examples below demonstrate that this 'conflict of interest' is more than theoretical, and that Skyracing already acts in Tabcorp's interests and to the detriment of consumers and competitors.

- As explained in <http://dodgytimes.com/>, camera angles and transitions between camera angles have been used in an attempt to conceal the misleading published winning and/or sectional times by making it more difficult to check times, or to verify the accuracy of race distances or placement of sectional markers. The problem was getting worse and on 13/2/15 I emailed the Chief Steward RacingNSW with the following request.

I am seeking your assistance in respect of a more difficult aspect of the dodgy published times.

As mentioned in the webpage dodgytimes.com winning times at Newcastle are sometimes fiddled by using incorrect start points. These days it is generally either very difficult or impossible to verify the start point because the Sky racing people involved are not showing the standard side-on view of the start. I believe the use of incorrect start points at Gosford and Wyong is a more recent development which is now also being concealed by using camera angles from the Stewards' Towers at the top of the home straights. A similar situation sometimes also occurs at Kembla Grange.

In addition, at Wyong where the red 600m marker has often been wrongly positioned, Sky racing have managed to avoid showing the side-on view at the 600m mark for the past few meetings.

In order to fix the incorrect published times I need to be able to verify the start position and 600m marks from the standard side-on view. Somehow, I'm sure the Steward's can make that possible for which I would be most grateful.

I received a response which was somewhat evasive (Sky racing uses Stewards' race footage for the alternate angles), nevertheless from that point on there was enough in the vision to enable me to verify times and distances, and without affecting the continuation of the fraudulent activity.

- Email to RacingNSW 4/9/15

As from the 1st of September, the picture quality on the replays deteriorated alarmingly (poorer definition, frames appearing to overlap, misshapen bodies of runners and at times the picture has been out of focus).

There was no response to the email but the problem was fixed. The extraordinarily poor quality replays (with some further variations) continued until 8/9/15 and are still on the RacingNSW website.

Since then, Sky racing seems to have settled on a compromise whereby the quality of most racing vision is sub-standard but apparently not bad enough to draw serious complaints. Often the 'High Definition' replays (when available) appear to be about 'Standard Definition' whereas the 'Standard Definition' replays appear to be a lower quality picture. Poor definition in the picture quality often makes it much more difficult to identify runners from the colours worn by their jockeys, and their saddlecloth numbers can be very difficult to read. A good example would be the replays for Gold Coast on 3/12/16, or Toowoomba on the same day. The more horses in a race the difficult it becomes (eg @ the 600m mark r7 Coffs Harbour 10/12/16 or r6 Eagle Farm 11/12/16). In my case, I sometimes now spend an extra three or so hours a week extracting the information I need from replays. I expect that most punters just don't get to appreciate as much of the detail in races which would otherwise be available from live racing vision or replays.

- Email to RacingNSW 17/8/16

Yesterday's replays for Newcastle and Murwillumbah all started after the barriers opened which makes it impossible to check the winning times from those replays.

Both NSW and Queensland replays as supplied by Sky Racing that day suffered the same deficiency, and were all subsequently replaced with complete replays. Had that modification to replays been allowed to continue it would have provided the opportunity for bigger and greater frequency in the misstated winning times without the risk of detection.

- Whereas pre-Tabcorp fixed price betting, viewers would typically see all the runners in picture, these days it is more likely that two or more runners (backmarkers) will be out of picture thereby making it much more difficult for the viewer to discern how much distance some runners made up relative to the rest of the field over say the last 600m of the race.

Tabcorp's ownership of Sky Racing also gives it a much greater market presence. Sky Racing content is saturated with Tabcorp and, to a lesser extent, Tatts betting information as well as Tabcorp advertising. The competitors are not visible on Sky Racing which is the only racing vision available for 75% of Australian televised thoroughbred racing and 100% of harness and greyhound racing. That is, by virtue of Tabcorp's ownership of Sky Racing, competitors cannot achieve a similar market presence or access to the market. Of course, competitors can spend big on advertising on other television channels but it's much more 'hit or miss' compared to the direct access Tabcorp and Tatts have to the target audience.

Furthermore, the 'dodgytimes' fraud against consumers and competitors would have been a much riskier undertaking if Tabcorp hadn't controlled what is seen in racing by the public.

'Special Circumstances' Industry

The gaming industry has been known to attract criminal activity, particularly in respect of money laundering. Thorough probity checks and licensing requirements and compliance with anti money laundering regulations are the norm. In that context, allowing an organisation suspected of a large scale fraud and market manipulation to merge into a much larger and more influential corporation would seem contrary to the standard of public governance that would normally be expected in Australia.

Concluding Comments

Coinciding with Tabcorp's entry into the fixed odds market for thoroughbred racing (and possibly harness and greyhound racing) the market has been rigged 'in plain sight' at the expense of unsuspecting consumers and competitors. There seems to be no doubt that at least one of the proposed merger parties has been responsible for the rigging of the market in its favour, a situation which the ACCC and other regulators have been aware of since mid-2014 or earlier. (Seemingly, the ACCC granted the racing authorities some form of exemption from Consumer Laws and allowed them to knowingly publish false and misleading information.)

The fraud would involve breaches of Consumer and Competition Laws that would likely result in substantial fines to Tabcorp and the individuals involved, there would possibly be criminal charges in relation to the fraud, and presumably Tabcorp would be in breach of agreements for the pari-mutuel franchises and at risk of losing those franchises which are key assets.

Assuming the Tatts is not involved in the rigging of the market it would be manifestly wrong to allow the proposed merger to proceed when Tatts shareholders are unaware of the potential fallout and losses in the event that the applicable laws are enforced.

Tabcorp's ownership of Sky racing is, in itself, anti-competitive. Irrespective of the outcome of the merger proposal Tabcorp should be required to divest its interest in Sky racing to an entity entirely independent of any bookmaker.

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