

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2017

Re: Application by Tabcorp Holdings Limited under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Applicant: Tabcorp Holdings Limited



STATEMENT

Statement of: Christopher White
Address: 2 Crofts Avenue, Hurstville, NSW 2220
Occupation: Group Operations Manager of Club Central
Date: 27 April 2017

| | | | |
|----------------------------|--|-----|-----------------|
| Filed on behalf of | Australian Competition and Consumer Commission | | |
| Prepared by | Simon Uthmeyer | | |
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I, **Christopher White**, of 2 Crofts Avenue, Hurstville, NSW 2220, Group Operations Manager, say as follows:

Background

1. I am the Group Operations Manager of Club Central Hurstville and Club Central Menai (collectively, **Club Central**). I am authorised to make this statement on behalf of Club Central.
2. I have worked at Club Central since 2008. Between 2008 and 2012, I was the Gaming Manager. Since 2012, I have been the Group Operations Manager.
3. As Group Operations Manager, I am responsible for the day to day operations of Club Central, including staffing, member services and facilities, gaming, bar, catering, contractors and building management. As part of my role as Group Operations Manager, I attend the finance committee meetings of the Board of Club Central. At those meetings, the Board discusses any issues that are relevant to the revenue of Club Central, including contracts with suppliers and service providers and the cost of goods and services.
4. I make this statement in relation to an application by Tabcorp Holdings Limited (**Tabcorp**) to the Australian Competition Tribunal for the authorisation of the proposed merger of Tatts Group Limited (**Tatts**) and Tabcorp.

Club Central

5. Club Central comprises two Clubs in southern Sydney: Club Central Hurstville and Club Central Menai. When it first opened in 1962, Club Central was known as the Illawarra Catholic Club. Club Central has around 50,000 members, and is a member of ClubsNSW.
6. Club Central provides a range of entertainment facilities to its members and guests in the local community, including restaurants, bars, concerts and shows, wagering, gaming and Keno.
7. In relation to wagering, Club Central has the following facilities at its venues:
 - (a) Retail wagering (referred to as "**the TAB**"), which is provided by TAB Ltd (which I understand is part of Tabcorp).

- (b) Sky channels (**Sky**), which show racing vision on screens throughout Club Central's venues. Sky is provided by Sky Channel Pty Ltd, which is part of Tabcorp.
- 8. In relation to gaming, Club Central has 516 electronic gaming machines (**EGMs**) across both venues. Our in-venue gaming system is provided by Intecq (previously known as eBet), which is part of Tabcorp. Our licensed monitoring services are provided by Maxgaming, which is owned by Tatts.

TAB and Sky at Club Central

- 9. As stated above, Club Central's TAB facilities are provided by TAB Ltd (which is part of Tabcorp and which I will refer to as Tabcorp) and Sky is provided by Sky Channel Pty Ltd (which is also part of Tabcorp and which I will refer to as Tabcorp). We deal with the same Tabcorp representative in relation to both the TAB and Sky. Club Central has two agreements with Tabcorp for the wagering facilities called Licensed Venue TAB Distribution Services Agreements (one for the Hurstville venue and one for the Menai venue) and two Licence Agreements with Tabcorp for the Sky channel subscription (one for Hurstville and one for Menai).
- 10. Sky is an essential component of the TAB, because customers only want to bet on races they can watch on the screen. At Club Central, we show both Sky Racing 1 and Sky Racing 2 and those channels are turned on for as long as the TAB is open. The TAB is generally open whenever there are races to watch, which is generally from 10 am until midnight every day, so screens showing Sky Racing 1 and Sky Racing 2 are generally on from 10 am until midnight every day. The EBT (the self-service terminal) is available the entire time that Club Central is open.
- 11. Club Central earns the following revenue streams from Tabcorp in relation to the TAB:
 - (a) Commission on TAB wagering turnover, which is [HIGHLY Confidential to Club Central]
 - (b) [HIGHLY Confidential to Club Central]
- 12. On average, Club Central receives commission of [HIGHLY Confidential to Club Central]

13. The costs associated with having the TAB include staff wages (as we have dedicated staff for the TAB), rental for the EBT (which is a self-service terminal that punters can use), consumables (such as stationery and printer cartridges for printing the race wall sheets) and Sky. After taking into account these costs, Club Central makes a loss of about \$1,000 per month on the TAB. The reason we offer the TAB (despite making a loss) is to get people into the Club so that they spend money on food and drinks, which are more profitable. If the Club wishes to stay competitive, we have to provide the same facilities that are on offer by our competitors, being other local hotels and clubs. Therefore we have little choice but to accept this loss.
14. Tabcorp calculates the annual price of Sky for both of Club Central's venues and sends two monthly invoices (one for Menai and one for Hurstville). Currently, the cost of Sky is [HIGHLY Confidential to Club Central] [REDACTED]. The price of Sky is based on the wagering turnover for both of Club Central's venues, so the more we make from wagering, the more we pay for Sky. Every year, there tends to be a small increase in the price of Sky. Club Central has no say in relation to the price that Tabcorp sets for Sky or the yearly increases.
15. In my experience, there is no real ability to negotiate with Tabcorp in relation to the terms of the agreements for the TAB or Sky, including commission payable on wagering turnover or the price of Sky. Tabcorp has a "take it or leave it" approach. If you don't like the terms of the contract, the commission rate for the TAB or the price of Sky, then you don't enter into the contract and you don't get the facilities.

Decline in retail wagering and rise in digital wagering

16. Over about the last five years, I have noticed a downward trend in Club Central's revenue from the TAB. It has not been a huge decrease, but it has been a gradual and steady decline over that period. In my view, this is because of the rise in digital wagering through websites and smartphone apps. The TAB is geared towards older people, who generally prefer to place bets in cash, whereas digital wagering is geared towards younger people, who are happy to place bets using an online account.
17. As digital wagering has become more popular, Club Central has "lost out" on revenue because customers in our venues are placing bets on digital wagering

websites and apps provided by corporate bookmakers such as Sportsbet and Bet365, rather than using Club Central's retail wagering facility. Those corporate bookmakers provide better incentives to punters and, coupled with the fact that younger people generally prefer to place bets online and through apps, I expect that revenue from the TAB will continue to decline.

18. At Club Central, we want to maximise the revenue we earn from wagering by offering our customers a digital wagering facility as well as retail wagering. I am excited by the potential we have to earn revenue from digital wagering, especially if we have a choice of digital wagering providers. The recent announcement by ClubsNSW in February 2017, about its partnership with CrownBet as a provider to New South Wales (**NSW**) clubs of digital wagering facilities, was a positive development for the NSW clubs industry.
19. Club Central is seriously considering pursuing a partnership with a provider of digital wagering facilities. Over the last 12 months, Club Central has had discussions with corporate bookmakers CrownBet and Betting.Club about providing digital wagering facilities. Currently, Club Central cannot pursue a partnership with a corporate bookmaker for digital wagering facilities, because there is uncertainty about whether partnerships such as these are allowed. The regulator, Liquor and Gaming NSW, is reviewing this issue and the NSW clubs industry is currently waiting for a decision from the regulator about whether partnerships with corporate bookmakers such as this are allowed. Until the regulator makes a decision and provides clarity about this issue, Club Central will not make a decision about pursuing a partnership with a digital wagering provider.
20. If the regulator says that clubs can enter into arrangements with corporate bookmakers to provide digital wagering facilities, Club Central will be very interested in exploring those opportunities. By entering into an arrangement with a provider of digital wagering facilities, I believe that Club Central will be able to recoup some of the "lost" revenue from customers in our venues placing bets on digital wagering websites and apps.

Recent communications with Tabcorp

21. On 14 February 2017, which was about a week after the announcement by ClubsNSW about its partnership with CrownBet, I received an email from Tabcorp

attaching a letter from David Attenborough, the Managing Director and CEO of Tabcorp. The letter was addressed to CEOs and Gaming Managers of NSW clubs. A copy of the letter from David Attenborough of Tabcorp dated 14 February 2017 is marked "CW-1" and attached to this statement. That letter confirmed that Tabcorp would be presenting a new wagering proposal to NSW clubs. It stated:

'As communicated last week, Tabcorp has not communicated to ClubsNSW that its "retail" wagering service will be available to operate alongside CrownBet's "digital" wagering service. ...

Tabcorp's position is that the only entity that is authorised under NSW wagering legislation to provide services off-course in NSW (including in registered clubs). We believe that the CrownBet arrangement constitutes a form of off-course wagering service and that it is therefore unlawful.

Tabcorp intends to work with Liquor & Gaming NSW to preserve and enforce the existing legislative framework. Consistent with this, Tabcorp is not prepared to negotiate with venues on a non-exclusive basis in a manner that would give credence to what we consider to be a business model that contravenes the legislative framework.'

22. I have been told the same thing (i.e. that Tabcorp is not prepared to negotiate with venues on a non-exclusive basis) in person by Tabcorp representatives, including Sean Scott (the State Sales Manager Retail Wagering at Tabcorp), Jane Clarke (the State Business Manager Clubs at Tabcorp) and Warwick Woods (a Business Development Manager at Tabcorp). During a meeting with those Tabcorp representatives, they told me (or said words to the effect that):

- (a) Club Central's contract with Tabcorp requires all on-site betting, whether retail or digital, to be done through Tabcorp.
- (b) The agreement for the TAB is "watertight" insofar as Tabcorp having exclusive rights to all betting inside Club Central's venues.
- (c) This means that Tabcorp's retail wagering service is not available to operate alongside CrownBet's digital wagering service.
- (d) If Club Central goes down the path of choosing another provider for digital wagering, it will be in breach of the agreement for the TAB.

Concerns about wagering facilities and Sky in the future

23. If the regulator says that partnerships with corporate bookmakers for digital wagering facilities are allowed and Club Central decides to take up an offering for digital wagering facilities from CrownBet or another provider, I have a number of concerns about what Tabcorp will do:
- (a) My first concern is that Tabcorp will refuse to continue to provide the TAB at Club Central. I have this concern based on the statements Tabcorp's representatives have made to me (referred to in paragraph 22 above) about the terms of the agreements for the TAB – i.e. that those agreements give Tabcorp "exclusive" rights and that Tabcorp's "retail" wagering service is not available to operate alongside CrownBet's "digital" wagering service. This would mean that punters could no longer place cash bets at Club Central, which currently account for the majority of wagering activity and would have an impact on revenue.
 - (b) My second concern is that Tabcorp will refuse to provide Sky to Club Central at all. If this happens, Club Central will have no access to racing vision and, if that happens, the TAB will effectively be useless because people only place bets if they can watch a race. This is why access to Sky is crucial.
 - (c) My third concern is that Tabcorp will increase the price of Sky significantly. As stated above, Club Central currently pays **[HIGHLY Confidential to Club Central]** [REDACTED] for Sky, which in my view is already an exorbitant amount of money. Club Central has no real ability to negotiate with Tabcorp on the cost of Sky and Tabcorp has the right to increase the price of Sky once a year at its discretion. If the cost of Sky increases significantly, this will have an impact on the profitability of Club Central and it could be a relatively significant impact considering its revenue.

Concerns about gaming data

24. Club Central uses eBET (now known as Intecq, which is owned by Tabcorp) for its in-venue gaming system, which is called Metropolis. Club Central also subscribes to Maxgaming's "Max Reports". These reports show the performance of particular types of EGMs and games in a particular region, but not in respect of an individual venue. We use these reports to analyse the operations of the gaming department

and to assist us in optimising the performance of our gaming operations. A copy of a Maxgaming report that Club Central has received is marked as **[HIGHLY Confidential to Club Central]** Annexure "CW-2" and attached to this statement. I can also log onto the Maxgaming website and get reports that show the performance of particular types of EGMs and games in a particular region, but not in respect of an individual venue.

25. As stated above, Club Central uses Maxgaming as its licensed monitoring operator (**LMO**). Maxgaming is the exclusive LMO in NSW. Maxgaming collects raw data from each EGM for integrity, compliance and taxation purposes (known as Central Monitoring System data (**CMS data**)). The CMS data it collects includes:
- (a) the type of EGM;
 - (b) how that EGM is set up (e.g. the game, denomination, jackpot configuration and return-to-player percentages);
 - (c) how frequently the EGM is being played, and at what times; and
 - (d) the turnover and wins of the EGMs.
26. This data is highly sensitive and valuable to a club. If someone analyses the data across a club (which anyone with good knowledge of gaming operations can do), it will show that person how profitable the gaming department is and how profitable each EGM is. Therefore, it gives valuable insight into the success of the club's gaming operations and the factors contributing to that success. If a competitor gets access to this data, it will be able to analyse the set up of the most profitable EGMs and the club's peak times, which will give the competitor valuable insights into how to successfully manage gaming operations and the marketing strategies it should put in place.
27. If the proposed merger goes ahead, I have real concerns about the merged entity's ability to access commercially sensitive data and the potential consequences to clubs in NSW.
28. As stated above, Maxgaming (being the only LMO in NSW) collects the CMS data from each EGM in NSW. I do not currently have any concerns about Maxgaming (which is owned by Tatts) holding this data, because Maxgaming does not provide any in-venue gaming system services to the NSW clubs market. On the other hand,

TGS (which is owned by Tabcorp) does provide gaming services to businesses that compete with clubs in NSW (i.e. it provides gaming services to some clubs and not others) and I have real concerns about TGS having access to this data.

29. The gaming services that TGS provides include consultancy advice and services to clubs to improve the profitability of their gaming operations (e.g. advice as to the set up of the gaming floor, return to player set up and marketing strategies). If the proposed merger goes ahead, I am concerned that TGS will be able to access the commercially sensitive and confidential data held by Maxgaming so that it can make informed decisions based on that data for the benefit of its clients (i.e. clubs that retain its gaming services). This will allow TGS to improve the profitability of its clients' venues by copying the gaming operations of clubs with successful gaming operations, at the expense of clubs that do not use TGS's gaming services. This will give TGS an unfair competitive advantage over other providers of gaming services. It will also give clubs that retain TGS's services an unfair advantage over independent clubs that do not retain TGS's services, as they will get the benefit of informed decisions based on commercially valuable data that should not be available to them or TGS.
30. Even if there is legislation or there are licence conditions that restrict TGS accessing and using the data held by Maxgaming (which I cannot comment on), I have no confidence that the legislation or licence conditions would deter TGS from accessing and using the data. The risk of detection would be negligible or non-existent, because it would be very difficult, or even impossible, for someone outside of Tabcorp to find out if TGS had accessed Maxgaming's data.
31. If TGS had access to the data, the potential commercial gain to TGS would be huge. TGS would have access to all data of all EGMs in NSW, so it could immediately improve the performance of its own clients' venues, which would enable it to sign up many more clients based on that performance.

Dated: 27 April 2017

Signed:



Christopher White

INDEX OF ANNEXURES TO STATEMENT OF CHRISTOPHER WHITE

| Annexure | Title | Confidentiality |
|----------|---|--|
| CW-1 | Letter from David Attenborough dated 14 February 2017 | |
| CW-2 | Maxgaming report | HIGHLY Confidential to Club Central – Restriction of publication of whole document claimed |

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Re: Application by Tabcorp Holdings Limited under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Applicant: Tabcorp Holdings Limited

ANNEXURE CERTIFICATE

This is the annexure marked "**CW-1**" annexed to the statement of **Christopher White** dated 27 April 2017.

Annexure "CW-1"

Letter from David Attenborough dated 14 February 2017

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|----------------------------|--|-----|-----------------|
| Filed on behalf of | Australian Competition and Consumer Commission | | |
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Tuesday 14 February, 2017

To: NSW Clubs Chief Executive Officers
NSW Clubs General Managers
NSW Clubs Secretary Managers

Good Morning,

Update on new Tabcorp Wagering proposal

We acknowledge that last week was a busy week for clubs absorbing information regarding a proposed alternative wagering offer. In the coming week, we will seek to arrange a meeting, at a time convenient for you, to present Tabcorp's new wagering proposal.

Our wagering proposal is compelling and will ultimately drive the best outcomes for all clubs and importantly, all club members.

The new digital commission model headlines our proposal for clubs that are exclusive to Tabcorp and enables you to earn commission from the current 485,000 TAB account holders in NSW and all future account holders. With the launch of TAB's digital commission model in NSW clubs, club venues will now earn commission from the circa \$10m of digital turnover recorded in club venues since 1st November 2016.

Tabcorp will facilitate a digital commission back payment to all club venues (delayed out of respect for the ClubsNSW tender process), and will make available the benefits outlined below by 31st March 2017.

Consistent with our licensed venue distribution services agreement these benefits are premised on a continued exclusive relationship with Tabcorp.

Our new deal will provide clubs and their members with:

- a unique wagering offer that incorporates and rewards venues for all betting in venue including cash and digital betting;
- a capital expenditure program to enhance your venue experience, without any associated recharge;
- a reduction in equipment rentals to drive operational savings;
- continued investment in initiatives that drive productivity and enhance the customer experience (such as TAB form);
- marketing, loyalty and CRM investment to drive visitation and personalised customer engagement;
- an offer that is not subject to performance hurdles;
- no requirement to enter into a long-term new agreement and no exposure to customer win rates, racing product fees or new gambling taxes; and
- no requirement for clubs to provide access to membership database

The above is not exhaustive and, later this week, we will be providing you with a brief video outlining our offer in more detail.

As communicated last week, Tabcorp has not confirmed to ClubsNSW that its "retail" wagering service will be available to operate alongside CrownBet's "digital" wagering service. Tabcorp is in dialogue with ClubsNSW regarding the CrownBet offer. ClubsNSW remain a very important partner to Tabcorp and we will keep you updated as discussions continue with them.

Tabcorp's position is that it is the only entity that is authorised under NSW wagering legislation to provide wagering services off-course in NSW (including in registered clubs). We believe that the CrownBet Arrangement constitutes a form of off-course wagering service and that it is therefore unlawful.

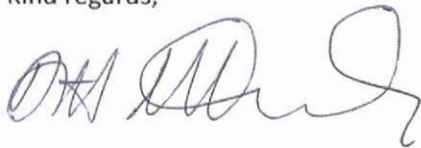
Tabcorp intends to work with Liquor & Gaming NSW to preserve and enforce the existing legislative framework. Consistent with this, Tabcorp is not prepared to negotiate with venues on a non-exclusive basis in a manner that would give credence to what we consider to be a business model that contravenes the legislative framework.

TAB has been part of the NSW community for more than 50 years. Unlike other wagering operators, we also return hundreds of millions of dollars to the NSW racing industry and NSW Government each year.

Tabcorp is also proud of its partnership with clubs such as yours, which in many cases extends from wagering to include Keno and other services. We thank you for your ongoing support. We are extremely keen to extend our longstanding relationship with you.

Please feel free to contact Sean Scott, Jade Clark or your BDM with any questions.

Kind regards,



DAVID ATTENBOROUGH
Managing Director & Chief Executive Officer

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Applicant: Tabcorp Holdings Limited

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked **"CW-2"** annexed to the statement of **Christopher White** dated 27 April 2017.

Highly Confidential Annexure "CW-2"

Maxgaming report

| | | | |
|----------------------------|--|-----|-----------------|
| Filed on behalf of | Australian Competition and Consumer Commission | | |
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