

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: Joshua Damond Landis
Address: Level 8, 51 Druitt Street, Sydney NSW 2000
Occupation: Executive Manager – Public Affairs of the Registered Clubs Association of New South Wales
Date: 27 April 2017

Filed on behalf of	Australian Competition and Consumer Commission		
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I, **Joshua Damond Landis**, of Level 8, 51 Druitt Street, Sydney NSW 2000, Executive Manager – Public Affairs, say as follows:

1. I am the Executive Manager – Public Affairs of the Registered Clubs Association of New South Wales (**ClubsNSW**). I am authorised by the Board of Directors of ClubsNSW to make this statement on behalf of ClubsNSW.
2. I also hold the position of Executive Manager – Public Affairs of Clubs Australia. I am also duly authorised by the Board of Clubs Australia to make this statement on behalf of Clubs Australia.
3. I make this statement in relation to an application by Tabcorp Holdings Limited (**Tabcorp**) to the Australian Competition Tribunal for authorisation of the proposed merger of Tatts Group Limited (**Tatts**) and Tabcorp.

Experience and employment

4. Since joining ClubsNSW in 2007, I have held a number of senior management positions within the organisation. Since 2010, I have held the position of Executive Manager – Public Affairs of ClubsNSW. In this role, I am responsible for internal and external media, communications and publications, legal and regulatory matters and public and corporate affairs.
5. Since starting at ClubsNSW, I have held the same roles and responsibilities in my role as Executive Manager – Public Affairs of Clubs Australia.
6. I have knowledge and experience of the registered clubs industry, and the important role that wagering and gaming play as sources of revenue for clubs in NSW.

ClubsNSW

7. ClubsNSW was founded in 1920 to represent the interests of registered clubs in New South Wales (**NSW**). My reference to "registered clubs in NSW" is a reference to clubs that are registered under the *Registered Clubs Act 1976* (NSW). In 1926, ClubsNSW was registered with the Industrial Arbitration Commission of NSW as an Industrial Organisation of Employers.
8. ClubsNSW has over 1,200 member clubs and represents over 93% of the registered clubs in NSW that have wagering and electronic gaming machine (**EGM**) operations.

9. ClubsNSW provides services to its member clubs, including industry advice and leadership, workplace relations services, learning and development services, media and publications services, ClubSAFE responsible gambling programs, major event planning services, workers compensation insurance and an industry superannuation fund.

Clubs Australia

10. Clubs Australia is a coalition of state and territory associations representing the interests of more than 6,500 licensed clubs across Australia and New Zealand including not-for profit bowls, golf, RSL, leagues, ethnic, community and workers' clubs. Clubs Australia has nine members, being the relevant state and territory peak associations, and the New Zealand peak association. The President of each state and territory association has a seat on the Board of Clubs Australia.
11. ClubsNSW administers Clubs Australia and has responsibility for its day-to-day operations. The Secretariat of Clubs Australia is run out of the same office as ClubsNSW. Clubs Australia does not have its own employees. Instead, the employees of ClubsNSW are, in effect, seconded to Clubs Australia as required. My team members at ClubsNSW have the same roles at Clubs Australia.

Overview of New South Wales clubs industry

12. The NSW registered clubs industry comprises 1,348 clubs, with 6.7 million total club memberships.
13. The NSW registered clubs industry makes an important contribution to the NSW and national economies, including to the economy in regional areas. NSW registered clubs generate annual revenues of approximately \$5.8 billion and, in the 2015 calendar year, paid \$1.4 billion in state and federal taxes. They also provided employment of about 62,000 full-time equivalent jobs in the 2015 calendar year and paid salaries, wages and superannuation of approximately \$1.8 billion.
14. The primary source of revenue of registered clubs in NSW is gambling services (comprising wagering, Keno and gaming facilities and services), which accounts for approximately 60% of the total revenue of registered clubs.

New South Wales clubs' dealings with Tabcorp and Tatts

15. Tabcorp and Tatts are important suppliers of gambling services to registered clubs.
16. Tabcorp supplies the following facilities and services to registered clubs in NSW:
 - (a) retail wagering;
 - (b) Keno;
 - (c) in-venue gaming systems (such as Intecq);
 - (d) access to vision on Sky Racing channels;
 - (e) business intelligence, which refers to the benchmarking that comes from reports produced by gaming systems;
 - (f) gaming services, meaning the outsourcing of a club's gaming operations.
17. ClubsNSW has the following commercial arrangements with Tabcorp:
 - (a) ClubsNSW and Tabcorp are joint licensees of Keno; and
 - (b) ClubsNSW and Tabcorp have entered into a corporate partnership under two corporate partnership agreements, one in relation to Keno and one in relation to Tabcorp Gaming Solutions (**TGS**). These partnerships each involve payments by Tabcorp to ClubsNSW for a range of marketing, promotional and other support services.
18. Tatts supplies the following services to registered clubs in NSW:
 - (a) EGM licensed monitoring services through Maxgaming;
 - (b) EGM repair and maintenance services through Bytecrafter;
 - (c) business intelligence; and
 - (d) wide area jackpots, which is a gaming machine jackpot that runs across multiple clubs and is operated pursuant to an exclusive licence issued to Maxgaming.

Financial performance of TAB retail wagering facilities in NSW clubs

19. In August 2016, ClubsNSW undertook a closed tender process for a digital wagering partner. I was part of the team at ClubsNSW that was responsible for conducting the process. Tabcorp was one of the tenderers.
20. As part of the tender process, Clubs NSW sought information from Tabcorp in relation to the financial performance of all licensed venues that have a TAB facility. Attached to this statement and marked [HIGHLY Confidential to Tabcorp] Annexure "JDL-1" is a copy of the document Tabcorp provided to ClubsNSW in response to this request. This document shows that in the 12 months ending August 2016, registered clubs in that have a TAB facility reported a combined loss of \$2.3 million on TAB retail wagering operations, before taking into account staff costs and other overheads. This figure takes into account the cost of Sky Racing. This is consistent with my understanding that the vast majority of clubs across Australia lose money on their TAB retail operations, even before overhead costs are taken into account.
21. Broadcast racing vision is a crucial input to successful wagering operations in licensed venues. Specifically, a key competitive advantage of licensed venues in attracting wagering customers to bet in-venue, rather than digitally outside the venue, is the display of racing vision on large screen televisions. The display of racing vision provides greater convenience and better entertainment than watching race vision on mobile devices.
22. Sky Racing subscription rates are partly based on retail wagering turnover, so the higher a club's turnover from retail wagering, the higher the rate for the Sky Racing subscription. However, Tabcorp has typically bundled services by offering rebates to clubs for the cost of the Sky Racing subscription where those clubs also have a Tabcorp retail wagering service. The Sky Racing rebate is often substantial [REDACTED] [HIGHLY Confidential to Tabcorp]
[REDACTED] This rebate has meant that the losses made by clubs on their retail wagering facilities have been less than they otherwise would have been. Without these rebates, there are some clubs, especially smaller clubs, that may not be able to continue to provide retail wagering facilities to their members.

Quality of Tabcorp's retail wagering facilities and level of service

23. Over the past five or so years, there has been significant growth in online wagering and a decline in retail wagering. In my view, part of the decline in retail wagering is due to the lack of investment in the retail experience. For example, there are not enough Electronic Betting Terminals (EBTs) available to customers, there are no cash redemption terminals (CRTs) available to customers, only a very limited number of venues have access to digital form guides for racing provided by Tabcorp and there has been minimal investment in value add devices that could be used in venues to improve the retail experience. Over the same period, there has been a growth in online wagering, which provides a better customer experience. For example, both SportsBet and Ladbrokes allow customers to withdraw funds from their accounts using automated teller machines (ATMs), and corporate bookmakers offer significantly better odds and customer promotions such as bonus bets. This increase in online wagering is commonly regarded by clubs as coming at the expense of revenue that would otherwise have been spent using their retail wagering facilities. Clubs feel that they are missing out on the opportunity to maximise potential revenue available from wagering (retail and digital) due to the lack of investment in retail and lack of opportunity in digital.
24. In my view, the lack of competition in retail wagering in licensed venues has allowed the quality of the retail wagering service offerings to decline relative to the broader wagering market.
25. Since 2007, NSW member clubs have expressed their frustration to ClubsNSW about the quality and cost of the retail wagering services provided by Tabcorp. On behalf of its members, ClubsNSW has repeatedly requested that Tabcorp introduce a number of technological enhancements to its TAB retail wagering service, including the following.
- (a) Since about 2012, ClubsNSW has requested on behalf of its member clubs that Tabcorp introduce cash redemption terminals into clubs. These terminals permit patrons to withdraw cash held in their TAB wagering accounts, which patrons could then spend on food and beverage or wagering at the club. About two to three years ago, Banktech developed the necessary technological interface to enable patrons to redeem wagering tickets for cash. ClubsNSW and Clubs Australia asked Tabcorp

to work with Banktech to develop cash redemption terminals, but Tabcorp refused to do so and said it was working on its own system. This issue causes major frustration for clubs. In April 2016, Tabcorp made a commitment to ClubsNSW that the cash redemption terminals would be rolled out to clubs by the first quarter of 2017. Since losing the ClubsNSW tender, Tabcorp has said that it may take considerably longer for the technology to be rolled out.

- (b) Currently, most clubs with TAB facilities need to have their staff print off race wall sheets, which inform punters about the entrants in each race. The staff need to manually update these race wall sheets throughout the day, which is time consuming and laborious for staff. Tabcorp made commitments in September 2014 to roll out technology to replace the manual race wall sheets with digital race sheets from December 2014, but still has not done this.

Commission on digital wagering

- 26. Over the past five years, ClubsNSW, on behalf of its member clubs, has made numerous requests of Tabcorp to introduce a digital wagering commission model so that clubs receive commission when bets are placed via a TAB digital channel such as the TAB website or TAB app. Over four years ago, Tabcorp completed a successful proof of concept in 19 NSW clubs.
- 27. Despite the successful proof of concept and advising clubs that it was undertaking feasibility studies for a network wide roll out, Tabcorp did not roll out a digital wagering commission model to clubs until very recently. In my view, there were disincentives for Tabcorp to roll out the digital wagering commission model to all NSW clubs because:
 - (a) it would have required investment by Tabcorp to set up because the proof of concept relied upon a number of beacons (devices that use Bluetooth technology to track smartphones, tablets and other devices) being placed in every club that has TAB facilities;
 - (b) Tabcorp would have needed to start paying commission to NSW clubs on digital wagering placed from within those clubs, which would have reduced Tabcorp's profit.

28. Tabcorp did not provide any explanation for its failure to roll out a digital wagering commission model, despite the successful proof of concept that was in place up to five years earlier. It was only very recently, after ClubsNSW made an announcement in February 2017 that it was partnering with CrownBet to provide digital wagering facilities to clubs in NSW, that Tabcorp finally offered a digital wagering commission model. When Mr Attenborough was asked about Tabcorp's offer of new services, including the digital wagering commission model, at a presentation he gave at the Australasian Hospitality & Gaming Expo 2017, he said words to the effect of *'competition does focus the mind'*.
29. In my view, Tabcorp has made it difficult for clubs to earn any revenue (i.e. commission) on digital wagering by:
- (a) repeatedly informing clubs that legislation or contractual provisions prohibit them from entering into contracts with competing digital wagering providers, which has deterred clubs from entering into such contracts. Several member clubs have told me that this is a substantial source of frustration, especially where there is ambiguity about whether clubs can offer digital wagering facilities. Examples of this are set out below;
 - (b) seeking to use its control of racing vision (through Sky Racing channels) to deter clubs from entering into arrangements with competing digital wagering providers, which is discussed in more detail below.

Recent communications from Tabcorp in relation to arrangements with digital wagering providers

30. The recent tender process that ClubsNSW undertook for a digital wagering partner provides an example of some of the difficulties that clubs have faced when they have explored potential arrangements with digital wagering providers.
31. As noted above, I was part of the team at ClubsNSW responsible for conducting a closed tender for digital wagering services in clubs. The closed tender involved Tabcorp, SportsBet, CrownBet and Betting.club. All parties were active participants in the tender process. By my assessment, CrownBet's offer was superior to the other tenders in every aspect, including better odds, enabling clubs to provide wagering facilities with reduced overhead costs, allowing clubs to generate revenue from bets placed outside of clubs, more innovative product offerings and better promotional

offers. The tender process led to CrownBet being announced as ClubsNSW's Official Digital Wagering Advertising Partner. The tender process strengthened my views that there are significant benefits for clubs and club members if there is a greater level of competition in the club wagering market.

32. I have been informed by a number of member clubs of ClubsNSW about correspondence they received from Tabcorp in which Tabcorp suggested that it may not be able to provide its retail cash wagering services to clubs that enter into a digital wagering advertising arrangement with CrownBet.
33. On or shortly after 7 February 2017, one of ClubsNSW's member clubs sent me a copy of a letter from David Attenborough, the CEO of Tabcorp, dated 7 February 2017, which was addressed to the CEOs, General Managers and Secretary Managers of various NSW clubs. A copy of that letter is marked Annexure "JDL-2" and attached to this statement. That letter informed clubs that Tabcorp was launching its venue digital commission model for all 732 Club TAB venues that day, which meant that venues would earn commission on digital bets placed by patrons using their TAB accounts while in the club's venue. The letter also confirmed that venues would be rewarded for digital out of venue turnover for newly acquired customers. The letter stated:

'Tabcorp recently submitted a new wagering proposal to ClubsNSW as part of its Digital Wagering Partner review. Whilst that proposal was ultimately not accepted by ClubsNSW, Tabcorp will make key aspects of the proposal available for individual Clubs, commencing with the launch of digital commissions today. ...

To ensure that there is no misunderstanding, we wish to clarify that Tabcorp has not confirmed to ClubsNSW that its "retail" wagering service will be available to operate alongside CrownBet's "digital" wagering service ...

Tabcorp is reviewing the proposed CrownBet service and considering options, including whether the combination of features that comprise that service cause CrownBet (or would cause the owner or occupier of a New South Wales venue facilitating that service) to contravene various sections of the Unlawful Gambling Act. We note that ss31 of that Act prohibits an owner or occupier of a premises from knowingly allowing the premises to be used

for, or in connection with, bookmaking carried on by or on behalf of a person who is not a licensed bookmaker. Tabcorp's strong understanding is that CrownBet is not a licensed bookmaker for the purposes of the UGA.

We encourage you to evaluate the CrownBet proposal in light of the legal risks as well as Tabcorp's commercial offering.'

34. On 14 February 2017, [HIGHLY Confidential to ClubsNSW] [REDACTED] sent an email to ClubsNSW about a meeting he had with Sean Scott of Tabcorp. A copy of that email is marked [HIGHLY Confidential to ClubsNSW] Annexure "JDL-3" and attached to this statement. In that email, [HIGHLY Confidential to ClubsNSW] [REDACTED] said that he had just met with Sean Scott and Mr Scott advised him that:

'if a Club signs with Crown it will not allow / participate in two wagering offerings and withdraw its Tab operations'.

35. On 14 February 2017, Clubs NSW received an email from David Attenborough about the proposed CrownBet offering. A copy of that email and the attachment is marked Annexure "JDL-4" and attached to this statement. That email stated:

'As we've indicated, our view remains that the proposed CrownBet arrangements constitute a form of off-course wagering service and that it is therefore unlawful. On that basis, Tabcorp is in a position where it can't negotiate with clubs on a non-exclusive basis.'

36. In that email, Mr Attenborough referred to an attached covering letter sent by Tabcorp to clubs CEOs. The letter, which is also included at Annexure "JDL-4", states:

'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 clubs 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.'

37. I understand from this letter and other communications ClubsNSW has received from its member clubs that Tabcorp has proposed new terms of contract to clubs for the TAB wagering facilities. I also understand from reports made by member clubs that Tabcorp has recently cancelled the Sky Racing rebates referred to in paragraph 22 above. Under the proposed new terms of contract, clubs agree to exclusively offer Tabcorp's retail and digital wagering facilities. The effect of this is that clubs cannot provide digital wagering facilities from another provider, such as CrownBet. In return, the clubs receive a rebate called a "Partnership Exclusivity Rebate", which equates to \$6,000 per year for clubs to exclusively promote Tabcorp's retail and digital wagering service. I have been informed by clubs that the proposed new terms of contract from Tabcorp will apply to all clubs, unless they "opt out" of the new contract. I have also received reports that clubs have recently started to receive payments from Tabcorp for the "Partnership Exclusivity Rebate".
38. The effect of cancelling the Sky Racing rebate previously provided by Tabcorp is that the cost of Sky Racing to NSW clubs will increase by a combined \$2 million per annum. Many clubs rely on this rebate for their retail wagering facilities to be commercially viable. By simultaneously offering the [REDACTED] Partnership Exclusivity Rebate" to clubs on an "opt out" basis, many clubs will be unintentionally agreeing to "bundle" their retail wagering facilities, digital wagering facilities and Sky Racing subscriptions, which will have the effect of foreclosing competitors to Tabcorp for the supply of digital wagering services to clubs.
39. The letter included at Annexure "JDL-4" also states the following in relation to its view about the availability of its retail wagering services:

[HIGHLY
Confidential to
Tabcorp]

'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.'

40. On 15 February 2017, Anthony Ball of ClubsNSW sent a letter by email to all member clubs about the letters Tabcorp had sent to clubs in recent days questioning the legality of the digital wagering partnership between ClubsNSW and CrownBet. A copy of that letter is marked as Annexure "JDL-5" and attached to this statement.
41. On or shortly after 24 February 2017, a member club of ClubsNSW sent a copy of a letter it had received from Matthew Isaacs, General Manager – Wagering Distribution of Tabcorp dated 24 February 2017. A copy of that letter is marked as **[HIGHLY Confidential to ClubsNSW]** Annexure "JDL-6" and attached to this statement. That letter noted that the venue had requested that Tabcorp enter into a new arrangement with the venue for the provision of wagering services on a non-exclusive basis and stated:

'At the outset, we note that Tabcorp has not agreed terms with ClubsNSW in respect of a new non-exclusive standard agreement between Tab Limited and licenced venues (New Standard Agreement). Nor does Tabcorp intend to do so, including because it understands that Tabcorp is the only wagering provider that is authorised to provide wagering services to Your Club under NSW wagering legislation.'

42. Several clubs have made reports to ClubsNSW about communications they have received from Tabcorp, which have created uncertainty around their ongoing access to Sky Racing vision or the price of Sky if they enter into a digital wagering arrangement with CrownBet. As mentioned earlier in my statement, broadcast racing vision is a crucial input to successful wagering operations in licensed venues.

Without access to racing vision, the licensed venue environment will be substantially less attractive to digital wagering customers, to the point that a digital wagering partnership is unlikely to be economically viable for the club or the digital wagering service provider.

43. For example, on or shortly after 24 February 2017, a member club of ClubsNSW sent ClubsNSW a copy of a letter dated 24 February 2017 it had received from Matthew Isaacs, General Manager – Wagering Distribution of Tabcorp. A copy of that letter is marked [HIGHLY Confidential to ClubsNSW] Annexure "JDL-7" and attached to this statement. This letter acknowledged that the member club wished to terminate its licensed venue TAB Distribution Services Agreement and stated:

'We note the statement in your letter that you are not seeking to affect other services provided by Tabcorp other than under the Agreement. We are currently considering our position in relation to the provision of other services (such as Sky vision) and will contact you separately about this.'

44. A number of clubs reported to ClubsNSW that they had received a copy of this letter dated 24 February 2017 from Matthew Isaacs. I understand from my communications with member clubs that all clubs that had served a notice of termination to Tabcorp or were discussing engaging digital wagering providers, such as CrownBet, received this letter.

45. The member clubs that received this letter reported to me that they were concerned about the ongoing availability of Sky Racing channels or the price of Sky Racing channels if they entered into a contract with a digital wagering provider.

46. On 1 March 2017, [HIGHLY Confidential to ClubsNSW] [REDACTED], sent an email to Clubs NSW, about a meeting he had with Tabcorp. A copy of that email is marked as [HIGHLY Confidential to ClubsNSW] Annexure "JDL-8" and attached to this statement. In that email, [HIGHLY Confidential to ClubsNSW] [REDACTED] stated:

'After meeting with TAB yesterday I would prefer to place the trial on hold until there is a better understanding between the parties.'

TAB have advised that they will not co-exist with CrownBet and that equipment removed from this site will be allocated to another Club and there will be little chance of it returning.

I feel that the risk is too high for a little ol' club like ours. Let the big boys take the first punt. (Pun intended).

I did ask the question concerning Sky and they were non-committal.'

47. On 2 March 2017, I received an email from [HIGHLY Confidential to ClubsNSW] [REDACTED] about a meeting he had with Tabcorp. A copy of that email is marked as [HIGHLY Confidential to ClubsNSW] Annexure "JDL-9". In that email, [HIGHLY Confidential to ClubsNSW] [REDACTED] stated, amongst other things:

'In summary, they were very non-committal and reluctant to quote too much other than to continually say we believe that the Crownbet offer is unlawful.

When asked to explain how it is unlawful the standard response is that it is in the hands of our lawyers.

When asked to explain how or if Sky is "linked" to the threat to remove venues retail offer if they sign with Crownbet, the initial answer was that it doesn't apply to Sky Channel as that is a separate subscription. However, I received a call 30 minutes after meeting with the BDE from the Regional Manager who stated that Tabcorp believes that Sky Channel may be linked and they couldn't allow Sky in a venue which was operating a service unlawfully (even they are confused with what they are and are not allowed to say).'

48. On 15 March 2017, I received an email from [HIGHLY Confidential to ClubsNSW] [REDACTED] containing a record of comments made by Kerrie McFayden of TGS (which is owned by Tabcorp) during a visit to [HIGHLY Confidential to ClubsNSW] [REDACTED] that day. A copy of that email is marked as [HIGHLY Confidential to ClubsNSW] Annexure "JDL-10" and attached to this statement.
49. On 16 March 2017, Mr Attenborough of Tabcorp sent an email to ClubsNSW attaching a letter that Tabcorp proposed to send to NSW clubs that day to clarify its

position in relation to Sky Racing. I understand that NSW clubs received this letter. A copy of letter from Mr Attenborough is marked as Annexure "JDL-11" and attached to this statement.

50. Around the same time (February to March 2017), several clubs verbally reported to ClubsNSW that their local Tabcorp representative had said to them during meetings that there was no guarantee that Tabcorp would continue to supply Sky and that it was likely that Tabcorp would increase the price of Sky if the clubs entered into a digital wagering contract with CrownBet. Although Tabcorp recently assured clubs (in its letter dated 16 March 2017, which is JDL-11) that Sky Racing will continue to be supplied to all venues (see below), the clubs remain very concerned that, if they enter into a digital wagering contract with CrownBet (or another provider), the price of Sky will increase to the maximum price set out on the rate card. This is because Tabcorp will have no way of assessing a club's wagering turnover, so the price will default to the maximum price. Tabcorp has not provided clubs with any clarity about how the price of Sky will be calculated if they enter into a digital wagering contract with CrownBet or another provider.
51. In total, ClubsNSW received verbal and written reports from about 30 member clubs in relation to communications from Tabcorp about the ongoing availability of Sky and the price of Sky referred to above. In addition to these reports, as far as I am aware, every club in NSW that has TAB facilities (i.e. over 1,000 clubs) received the communications from Mr Attenborough of Tabcorp dated 7 February 2017 and 14 February 2017 (referred to at paragraphs 33 and 35 respectively above), which impliedly made the threat that TAB's retail wagering facilities would not be available if clubs decided to take up the CrownBet proposal.
52. Many of the member clubs reported to ClubsNSW that the threats (or implied threats) referred to above were accompanied by a commercial offer from Tabcorp to enter into a new contract for the TAB facilities. As explained above, this new contract requires the clubs to grant full exclusivity to Tabcorp with respect to digital wagering advertising within the club, as discussed in more detail below.

Concerns about the proposed merger

53. Although Tabcorp wrote to clubs on 16 March 2017 [JDL-11] confirming that it will continue to offer Sky Racing to clubs based on the current Sky Racing rate card, that

assurance is of little or no comfort, because [HIGHLY Confidential to Tabcorp]

[REDACTED] I have no confidence in the statement Tabcorp made in its letter confirming that the current standard rate card pricing will continue, especially in light of previous assurances that Tabcorp has made in the past that have not come to fruition.

54. I am concerned that, if the merger proceeds, the merged entity will adopt a similar approach in Tatts jurisdictions to the approach that it has currently taken in NSW in that it will effectively force clubs to agree to exclusivity clauses in their contracts with Tabcorp for wagering services and to the bundling of retail wagering, digital wagering and Sky. The effect of this will be that clubs have no real choice to use competitor digital wagering providers and, if they do use a competitor digital wagering provider, they run the risk of losing access to Sky Racing or the cost of their Sky Racing subscription increasing significantly to a level that it is not commercially viable. Clubs that currently have Tatts or UBET retail wagering offers will end up receiving their retail wagering services and Sky Racing services from one company instead of two.
55. In my view, the merger will create a situation that dramatically increases the number of customers of the merged entity who have bundled services. This is because retail wagering facilities, Sky and most likely digital wagering offers, will be bundled and provided by the same supplier in all states except for Western Australia. In my view, this will make it easier for Tabcorp to introduce large increases to the Sky rate card with relative impunity, provided that these increases are offset by exclusivity payment or rebates for customers with bundled services. Alternatively, Tabcorp may refuse to provide Sky Racing or to only supply it at a high price to customers who do not wish to enter into a bundled package.
56. In summary, if the merger proceeds, the merged entity will have a substantial ability to deter licensed venues from entering into arrangements with competing digital wagering providers by controlling the access, pricing and bundling of Sky Racing.
57. In my view, short of the Tribunal requiring the divestment of Sky Racing, there are a number of undertakings that the merged entity could provide that would help ameliorate the competition concerns. These would include:

- (a) that the merged entity will continue to supply Sky Racing to all licensed venues, regardless of the venue's digital wagering service provider(s), and that there is clarity and certainty regarding the pricing structure of Sky Racing;
- (b) that the merged entity will immediately exit all pre-existing bundling arrangements involving retail wagering services, and that it will not enter into any new bundling arrangements or have different pricing structures for Sky Racing depending on the digital wagering provider the venue uses; and
- (c) that the merged entity will not increase the cost of Sky Racing, other than increases referable to the indexing of the consumer price index (CPI), unless there is a substantive increase in Sky Racing content.

Dated: 27 April 2017

Signed:



Joshua Damond Landis

INDEX OF ANNEXURES TO STATEMENT OF JOSHUA DAMOND LANDIS

Annexure	Title	Confidentiality
JDL-1	Document provided by Tabcorp to ClubsNSW during tender process	HIGHLY Confidential to Tabcorp – Restriction of publication of whole document claimed
JDL-2	Letter from David Attenborough to NSW clubs dated 7 February 2017	
JDL-3	Email from [HIGHLY Confidential to ClubsNSW] [REDACTED] dated 14 February 2017	HIGHLY Confidential to ClubsNSW – Restriction of part publication claimed – Confidential information highlighted
JDL-4	Email from David Attenborough to ClubsNSW dated 14 February 2017 and attached letter sent by email	
JDL-5	Email from Anthony Ball of ClubsNSW to member clubs dated 15 February 2017	
JDL-6	Letter from Matthew Isaacs to member club dated 24 February 2017	HIGHLY Confidential to ClubsNSW – Restriction of part publication claimed – Confidential information highlighted
JDL-7	Letter from Matthew Isaacs to member club dated 24 February 2017	HIGHLY Confidential to ClubsNSW – Restriction of part publication claimed – Confidential information highlighted
JDL-8	Email from [HIGHLY Confidential to ClubsNSW] [REDACTED] dated 1 March 2017	HIGHLY Confidential to ClubsNSW – Restriction of part publication claimed – Confidential information highlighted
JDL-9	Email from [HIGHLY Confidential to ClubsNSW] [REDACTED] [REDACTED] dated 2 March 2017	HIGHLY Confidential to ClubsNSW – Restriction of part publication claimed – Confidential information highlighted
JDL-10	Email from [HIGHLY Confidential to ClubsNSW] [REDACTED] [REDACTED] dated 15 March 2017	HIGHLY Confidential to ClubsNSW – Restriction of part publication claimed –

[PUBLIC VERSION]

		Confidential information highlighted
JDL-11	Email from David Attenborough to ClubsNSW dated 16 March 2017, with attached letter from Tabcorp to NSW clubs	

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

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**JDL-1**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Highly Confidential Annexure "JDL-1"

Document provided by Tabcorp to ClubsNSW during tender process

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
Email	Simon.Uthmeyer@dlapiper.com		
	DLA Piper		
	140 William Street		
Address for service	Melbourne VIC 3000		

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

ANNEXURE CERTIFICATE

This is the annexure marked "**JDL-2**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Annexure "JDL-2"

Letter from David Attenborough dated 7 February 2017

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
Email	Simon.Uthmeyer@dlapiper.com		
	DLA Piper		
	140 William Street		
Address for service	Melbourne VIC 3000		

7 February, 2017

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

Good Evening,

Tabcorp: Launch of Digital Commissions for Clubs and new Wagering proposal

In mid-November, Tabcorp launched Digital Commissions into the Hotel and Agency channels within New South Wales, though respected the ClubsNSW process and refrained from launching in Clubs venues.

With that process now complete, we are pleased to inform you that Tabcorp is today launching our venue digital commission model for all 732 Club TAB venues. This means NSW Club TAB venues will now earn the full retail commission from digital bets placed in your venue from the 485,000 TAB account holders in NSW. Additionally, we are rewarding venues for digital out of venue turnover for newly acquired customers.

Tabcorp recently submitted a new wagering proposal to ClubsNSW as part of its Digital Wagering Partner review. Whilst that proposal was ultimately not accepted by ClubsNSW, Tabcorp will make key aspects of the proposal available for individual Clubs, commencing with the launch of digital commissions today. This will create better experiences for your customers, increased efficiencies and increased revenues for your Club.

Tabcorp understands that today, ClubsNSW has appointed CrownBet as its Official Digital Wagering Partner. Tabcorp also understands that ClubsNSW has written to all clubs in the ClubsNSW network to say that those clubs now have the option of engaging CrownBet to provide them with exclusive “digital wagering services” and to provide clubs with a template letter to use if they decide to terminate their existing licensed venue agreements with Tabcorp (LV Agreement) with a view to negotiating a non-exclusive arrangement with us. It is important to ensure you have all the information to assess this (or any other) proposal.

To ensure that there is no misunderstanding, we wish to clarify that Tabcorp has not confirmed to ClubsNSW that its “retail” wagering service will be available to operate alongside CrownBet’s “digital” wagering service.

Tabcorp’s position is that:

- it is the sole wagering provider that is entitled to provide gambling services (including digital wagering) off-course in New South Wales, by virtue of its wagering licence and New South Wales wagering legislation;
- this entitlement is important to Tabcorp and to the stakeholders that rely on it; and
- Tabcorp is reviewing the proposed CrownBet service and considering options, including whether the combination of features that comprise that service cause CrownBet (or would cause the owner or occupier of a New South Wales venue facilitating that service) to contravene various sections of the Unlawful Gambling Act. We note that ss31 of that Act prohibits an owner or occupier of a premises from knowingly allowing the premises to be used for, or in connection with, bookmaking carried on by or on behalf of a person who is not a licensed bookmaker. Tabcorp’s strong understanding is that CrownBet is not a licensed bookmaker for the purposes of the UGA.

We encourage you to evaluate the CrownBet proposal in light of the legal risks as well as Tabcorp's commercial offering.

Tabcorp continues to be the clear market leader in both NSW and Australia and is the only wagering operator that can deliver your customers the benefits of both cash, digital and live in-play betting within your venue.

Tabcorp's partnership with all Clubs is longstanding and we look forward to it continuing.

Our Team will arrange time to meet with you to discuss our retail offer (including digital commission model) in more detail. We thank you for your ongoing support.

Kind regards,

A handwritten signature in black ink, appearing to read 'DAVID', is written over a printed name and title.

David Attenborough
Managing Director & Chief Executive Officer

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

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**JDL-3**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Highly Confidential Annexure "JDL-3"

Email from [HIGHLY Confidential to ClubsNSW] [REDACTED] dated 14 February 2017

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
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	DLA Piper		
	140 William Street		
Address for service	Melbourne VIC 3000		

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

ANNEXURE CERTIFICATE

This is the annexure marked "**JDL-4**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Annexure "JDL-4"

Email from David Attenborough to ClubsNSW dated 14 February 2017 and attached letter sent by email

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
Email	Simon.Uthmeyer@dlapiper.com		
	DLA Piper		
	140 William Street		
Address for service	Melbourne VIC 3000		

From: De Souza, Jane <Jane.DeSouza@tabcorp.com.au> on behalf of Attenborough, David <David.Attenborough@tabcorp.com.au>
Sent: Tuesday, February 14, 2017 12:30:25 PM
To: Anthony Ball
Subject: CrownBet Stakeholders Status Update

Dear Anthony

Thank you for your letter of 10 February 2017.

While we appreciate the offer to meet we don't think it would be appropriate to do so at this time. As we've indicated, our view remains that the proposed CrownBet arrangements constitute a form of off-course wagering service and that it is therefore unlawful. On that basis, Tabcorp is in a position where it can't negotiate with clubs on a non-exclusive basis.

In the interests of maintaining transparency and a constructive dialogue, we attach a copy of a letter sent by Tabcorp today to clubs CEO's. As you noted, Tabcorp is keen to ensure that the clubs can effectively evaluate the competing offers with all relevant information to hand.

Yours sincerely

DAVID

DAVID ATTENBOROUGH
MANAGING DIRECTOR & CEO

T +61 2 9218 1484
E david.attenborough@tabcorp.com.au

Tabcorp Holdings Ltd
31/680 George St
Sydney NSW 2000

The Tabcorp logo, featuring the word "Tabcorp" in a bold, dark blue, sans-serif font.

This email, and any attachments, is confidential and may be covered by legal professional privilege or other legal rules. If you are not the intended recipient you must not disclose or use the information contained in it.

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.

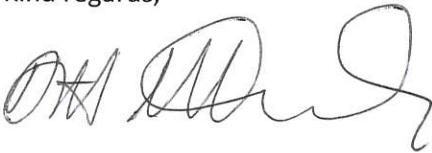
Tabcorp intends to work with Liquor & Gaming NSW to preserve and enforce the existing legislative framework. Consistent with this, Tabcorp is not prepared to negotiate with venues on a non-exclusive basis in a manner that would give credence to what we consider to be a business model that contravenes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

A handwritten signature in black ink, appearing to read 'DAVID ATTENBOROUGH', written over a light blue horizontal line.

DAVID ATTENBOROUGH

Managing Director & Chief Executive Officer

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

ANNEXURE CERTIFICATE

This is the annexure marked "**JDL-5**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Annexure "JDL-5"

Email from Anthony Ball of ClubsNSW to member clubs dated 15 February 2017

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
Email	Simon.Uthmeyer@dlapiper.com		
	DLA Piper		
	140 William Street		
Address for service	Melbourne VIC 3000		

O'Reilly, Cameron

From: Laura O'Brien <LO'Brien@clubsnsw.com.au>
Sent: Wednesday, 26 April 2017 12:17 PM
To: Anne Formby
Subject: FW: Update on CrownBet from ClubsNSW CEO

From: clubsinfo
Sent: Wednesday, 15 February 2017 4:39 PM
To: Laura O'Brien <LO'Brien@clubsnsw.com.au>
Subject: Update on CrownBet from ClubsNSW CEO

Dear XXXX,

There has certainly been a lot of activity since we announced our digital wagering partnership with CrownBet a week ago. There has been extensive media coverage of the deal, as well as two recent letters from Tabcorp to club CEOs – all of which has no doubt left you with some questions.

I wanted to write to you today to address those questions.

As you know, we have been working through an analysis of the club digital footprint for about a year now and our digital wagering partnership is the first output.

The decision followed an extensive wagering review and tender process involving CrownBet, Tabcorp, Sportsbet.com.au and Betting.Club. We determined that CrownBet offered the best deal for both our Member Clubs and their members, ensuring a fair return on club wagering operations and a better deal for punters.

The tender process was fair to all parties and we assessed the tenders on their merits. All four companies participated fully and at no stage did they voice concern that the digital offering requested by ClubsNSW would be illegal if they were to deliver it.

CrownBet won the tender because:

- we believe Member Clubs will make more money;
- the offer will increase visitation to Member Clubs, driven by a loyalty programme that will be fully integrated on Day 1, allowing punters to redeem for food and drinks; and
- there are no upfront or on-going costs for Member Clubs.

As you would know, Tabcorp has sent two letters to clubs in recent days, questioning the legality of the digital wagering partnership and threatening to pull its cash wagering facilities out of any club that signs up with CrownBet (while at the same time pushing their own digital offering).

These letters from Tabcorp are threatening and at odds with the public comments of its CEO, David Attenborough who recently said:

"...at the moment all operators can offer digital in venues, any customer standing there on average if they've got an account, they've got 3 accounts, they've got a TAB account and 2 corporate bookmaker accounts, so digital in venue is being offered by all our competitors, and it's a highly competitive market..."^[1]

Now, after being unsuccessful in the tender process, it seems they have changed their mind.

[PUBLIC VERSION]

There has been some concern raised about the terminals associated with the CrownBet offer. The design and exact functionality of these is still under consideration, and they will be made available to clubs only after taking the best legal advice on the final design and gaining the authorisation of the NSW regulator.

Contrary to recent coverage of this issue, I can confirm that no equipment or device will be installed at Member Clubs which accepts or otherwise provides a facility for the placing of bets.

Nevertheless, consistent with our approach to any new product or service, ClubsNSW has already and will continue to engage with Liquor & Gaming NSW as well as the NSW Government to ensure there are no regulatory concerns with any of the elements of the CrownBet offer.

I have offered to meet with the Tabcorp CEO to discuss the specific concerns he might have with the CrownBet offer; he has rejected that offer, despite claiming to be in dialogue with ClubsNSW. I will continue to extend that offer and discuss this matter for the benefit of our clubs.

Please do not hesitate to contact me if you have any questions on this.

Regards,

Anthony Ball,
Chief Executive Officer
ClubsNSW

^[1] Tabcorp Half Year Results to 31 December 2016 Webcast, 2 February 2017, <http://edge.media-server.com/m/p/hsvc7hus>

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

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**JDL-6**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Highly Confidential Annexure "JDL-6"

Letter from Matthew Isaacs to member club dated 24 February 2017

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
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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

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**JDL-7**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Highly Confidential Annexure "JDL-7"

Letter from Matthew Isaacs to member club dated 24 February 2017

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
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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

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**JDL-8**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Highly Confidential Annexure "JDL-8"

Email from [HIGHLY Confidential to ClubsNSW] [REDACTED] dated 1 March 2017

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
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Address for service	Melbourne VIC 3000		

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

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**JDL-9**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Highly Confidential Annexure "JDL-9"

Email from [HIGHLY Confidential to ClubsNSW] [REDACTED]
[REDACTED] dated 2 March 2017

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
Email	Simon.Uthmeyer@dlapiper.com		
	DLA Piper		
	140 William Street		
Address for service	Melbourne VIC 3000		

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

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**JDL-10**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Highly Confidential Annexure "JDL-10"

Email from [HIGHLY Confidential to ClubsNSW] [REDACTED]
[REDACTED] dated 15 March 2017

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
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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

ANNEXURE CERTIFICATE

This is the annexure marked "**JDL-11**" annexed to the statement of **Joshua Damond Landis** dated 27 April 2017.

Annexure "JDL-11"

Email from David Attenborough to ClubsNSW dated 16 March 2017, with attached letter from Tabcorp to NSW clubs

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
Email	Simon.Uthmeyer@dlapiper.com		
	DLA Piper		
	140 William Street		
Address for service	Melbourne VIC 3000		

From: De Souza, Jane <Jane.DeSouza@tabcorp.com.au> on behalf of Attenborough, David <David.Attenborough@tabcorp.com.au>
Sent: Thursday, March 16, 2017 4:06:47 PM
To: Anthony Ball
Subject: Update on Sky Racing

Dear Anthony

There have been questions about whether Sky Racing would continue to be supplied to venues that enter into an agreement with Crownbet. There has also been some confusion about our position on this matter.

Please find attached correspondence that we are sending to Clubs this afternoon to clarify our position with respect to Sky Racing.

If you have any questions, please don't hesitate to contact me.

Best Regards

DAVID ATTENBOROUGH

DAVID ATTENBOROUGH
MANAGING DIRECTOR & CEO

T +61 2 9218 1484
E david.attenborough@tabcorp.com.au

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Tabcorp



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Tabcorp

Thursday 16 March, 2017

«First_Name» «Surname»
«Venue_Name»

Dear «First_Name»,

Update on SKY Racing

I understand that some clubs have discussed the recent CrownBet offer with Tabcorp business managers, and that there have been questions about whether Sky Racing would continue to be supplied to venues which enter into an agreement with CrownBet. I also appreciate that there may be some confusion about our position as a result of misinformation in the market.

To be clear, notwithstanding Tabcorp's position as to the legality of the CrownBet offer, I can confirm that Sky Racing will continue to be supplied to all venues. We have also clarified this position with ClubsNSW directly.

Subscription charges will be calculated on the basis of the current Sky Racing rate card and in accordance with the terms of the existing Sky Racing licence agreement.

The rate card includes a fixed price component and a variable fee based on wagering turnover. The variable fee is calculated by reference to wagering turnover at the premises, which would include any digital turnover.

For ease of reference, links to the current Rate Card & Licence Agreement are listed below:

[Click here to download the current Rate Card](#)

[Click here to download the SKY Licence Agreement](#)

I trust that this addresses any confusion in the marketplace. Should you have any questions about this email I would encourage you to call your BDM «BDM» on «BDM_Phone_Number».

Kind Regards,

David

David Attenborough
Managing Director & Chief Executive Officer