

**COMMONWEALTH OF AUSTRALIA**

*Competition and Consumer Act 2010 (Cth)*

**IN THE AUSTRALIAN COMPETITION TRIBUNAL**

File No: ACT 3 of 2017

Re: Application for merger authorisation of the proposed acquisition of Tatts Group Limited by Tabcorp Holdings Limited

Applicant: Tabcorp Holdings Limited

**DIRECTIONS**

TRIBUNAL: Justice Middleton (President)

DATE OF ORDER: 3 October 2017

WHERE MADE: Melbourne



**THE TRIBUNAL DIRECTS THAT:**

**Definitions used in these directions**

1. The following defined terms apply for the purposes of these Orders:
  - (a) **Act** means *Competition and Consumer Act 2010 (Cth)*.
  - (b) **Commission** means the Australian Competition and Consumer Commission.
  - (c) **Confidentiality Claimant** means, in respect of particular Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
  - (d) **Confidential Information** means all information filed with the Tribunal in the Proceeding in respect of which a claim of confidentiality has been made and which has not been refused by the Tribunal and which has been marked either 'Confidential', 'HIGHLY Confidential' or 'Extra-Highly Confidential'.
  - (e) **Intervener** means a person or entity which:
    - i. has made an application for leave to intervene in the Proceeding which has not been refused by the Tribunal; or
    - ii. is permitted by the Tribunal pursuant to section 109(2) of the Act to intervene in the Proceeding.

- (f) **Orders** means these orders dated 3 October 2017.
- (g) **Proceeding** means ACT 3 of 2017 (including any appeals from a decision of the Tribunal in the Proceeding).
- (h) **Support Staff** means persons providing administrative assistance and includes secretaries, administrative assistants, graduates, IT staff, print room staff and staff of external printing vendors.
- (i) **Tabcorp** means Tabcorp Holdings Limited.
- (j) **Tatts** means Tatts Group Limited.
- (k) **Tribunal** means Australian Competition Tribunal.

### **Third parties and applications to intervene**

- 2. The following persons or entities be granted leave to intervene in the proceeding:
  - (a) Tatts;
  - (b) CrownBet Pty Ltd (**CrownBet**);
  - (c) Racing Victoria Limited, Harness Racing Board (trading as Harness Racing Victoria) and Greyhound Racing Control Board (trading as Greyhound Racing Victoria (together, **Racing Victoria Interveners**); and
  - (d) Racing.com Pty Ltd (**Racing.com**).



### **Confidentiality**

#### *Access to Confidential Information*

- 3. The following persons have unrestricted access to the Confidential Information marked either 'Confidential' or 'HIGHLY Confidential', provided such persons keep that material confidential in accordance with these Orders:
  - (a) the Tribunal, Tribunal staff and any other person assisting the Tribunal;
  - (b) the Commission, Commission staff and any other person assisting the Commission in relation to the Proceeding including the Commission's external barristers and solicitors;
  - (c) external consultants and independent experts engaged for the purpose of the Proceeding by the Commission (or the Commission's external solicitors), provided that the Commission's external solicitors have notified the relevant Confidentiality Claimant of the names of such persons; and
  - (d) Support Staff of the persons listed in 3(a)-(c) of these Orders.

4. The following persons have unrestricted access to the Confidential Information marked either 'Confidential' or 'HIGHLY confidential', provided that such persons have signed the confidentiality undertaking in the form attached and marked "Confidentiality Undertaking C":
  - (a) external barristers and solicitors retained by Tabcorp or by Tatts or by any Intervener for the purpose of the Proceeding;
  - (b) independent experts retained for the purposes of the Proceeding by Tabcorp or by Tatts or by any Intervener (or their external solicitors), with the prior written consent of the Confidentiality Claimant;
  - (c) any other person, with the prior written consent of the Confidentiality Claimant; and
  - (d) Support Staff of the persons listed in paragraphs 4(a)-(c) of these Orders.
  
5. The following persons have unrestricted access to the Confidential Information marked 'Confidential', provided that such persons have signed the confidentiality undertaking in the form attached and marked "Confidentiality Undertaking C":
  - (a) internal legal counsel of Tabcorp or Tatts who directly assist with the day today conduct of the Proceeding;
  - (b) any other person, with the prior written consent of the Confidentiality Claimant; and
  - (c) Support Staff of the persons listed in paragraph 5(a) of these Orders.
  
6. The following persons have unrestricted access to the Confidential Information marked 'Extra-Highly Confidential', provided such persons keep that material confidential in accordance with these Orders:
  - (a) the Tribunal, Tribunal staff and any other person assisting the Tribunal;
  - (b) the Commission, Commission staff and any other person assisting the Commission in relation to the Proceeding including the Commission's external barristers and solicitors;
  - (c) external consultants and independent experts engaged for the purpose of the Proceeding by the Commission (or the Commission's external solicitors), provided that the Commission's external solicitors have notified the relevant Confidentiality Claimant of the names of such persons;



- (d) external barristers retained by Tabcorp, Tatts, or by any Intervener for the purpose of the Proceeding, as listed below or agreed between Tabcorp, Tatts and the other Interveners and notified to the Tribunal in writing:
- i. Cameron Moore SC, Nicholas De Young, Robert Yezerski and Anais d'Arville for Tabcorp;
  - ii. Rod Smith SC, Declan Roche, Gerald Ng and David Hughes for Tatts;
  - iii. Bret Walker SC, Michael Borsky QC and Andrew Barraclough for CrownBet;
  - iv. Simon White SC for Racing Victoria Interveners; and
  - v. Andrew Bell for Racing.com; and
- (e) Support Staff of the persons listed in paragraphs 6(a)-(d) of these Orders.

7. The following persons have unrestricted access to the Confidential Information marked 'Extra-Highly Confidential', provided that such persons have signed a confidentiality undertaking in the form attached and marked "Confidentiality Undertaking A" or "Confidentiality Undertaking B" (noting that Confidentiality Undertaking A is to be signed by legal practitioners acting for Tabcorp or Tatts, and Confidentiality Undertaking B is to be signed by legal practitioners acting for CrownBet, the Racing Victoria Interveners and Racing.com):

- (a) external solicitors retained by Tabcorp, Tatts, CrownBet, the Racing Victoria Interveners and Racing.com for the purpose of the Proceeding, as listed below or agreed between Tabcorp, Tatts and the other Interveners and notified to the Tribunal in writing:
- i. Grant Marjoribanks, Chris Jose and Merryn Quayle of Herbert Smith Freehills for Tabcorp;
  - ii. Simon Muys and Jeremy Jose of Gilbert + Tobin for Tabcorp;
  - iii. Michael Corrigan, Ian Reynolds and Doug Thompson of Clayton Utz for Tatts;
  - iv. Geoff Carter, Glen Ward and Miranda Noble of MinterEllison for CrownBet Pty Ltd;
  - v. Nick Taylor and Prudence Smith of Jones Day for the Racing Victoria Interveners; and
  - vi. John Kench of Johnson Winter & Slattery for Racing.com; and



- (b) any other person, with the prior written consent of the Confidentiality Claimant.

*General orders as to confidentiality*

8. Each party must ensure that any documents filed with the Tribunal which contain Confidential Information are clearly marked so as to indicate:
- (a) that the whole document consists of Confidential Information (and whether that information is 'Confidential', 'HIGHLY Confidential' or 'Extra-Highly Confidential'); or
  - (b) that parts of the document contain Confidential Information and, if that is the case, which parts (and whether that information is 'Confidential', 'HIGHLY Confidential' or 'Extra-Highly Confidential').
9. On 2 days' notice to the Confidentiality Claimant, the Commission, Tabcorp, Tatts, any other Intervener and any other interested person has liberty to apply for a direction seeking access to Confidential Information. The relevant Confidentiality Claimant and the Commission will be provided with an opportunity to be heard before the Confidential Information is disclosed to any person other than as permitted by these Orders.
10. Until further order of the Tribunal, Confidential Information is not to appear in any transcript of the Proceeding before the Tribunal other than in a confidential copy of the transcript, which shall only be made available to the persons referenced in paragraph 3 of these Orders and otherwise, as permitted by these Orders.
11. The Commission is to file and serve any objections to confidentiality claims made by Tabcorp, Tatts or any other Intervener within 7 days of receipt of the confidentiality claim. Any objections are to be dealt with on the papers, unless any party notifies the Tribunal within 24 hours of the receipt of reasons for objections that they require a hearing to resolve these objections, such hearing to be held at such time and date as the Tribunal may order.

**Report and Evidence**

12. The evidence filed and adduced in proceeding ACT 1 of 2017 shall stand as evidence in this proceeding.



13. The third party submissions filed in proceeding ACT 1 of 2017 stand as the third party submissions in this Proceeding subject to any third party advising the Tribunal that it withdraws its submission.
14. Tabcorp, Tatts and any Intervener file with the Tribunal and serve on each other and the Commission any evidence which has arisen since 2 June 2017 by no later than Friday 6 October 2017.
15. The Commission file with the Tribunal and serve on Tabcorp, Tatts and the Interveners a report pursuant to s 95AZEA of the Act and any evidence or other material upon which it seeks to rely which has arisen since 2 June 2017 by no later than Friday 13 October 2017. The report to be filed and served by the Commission must be in relation to matters that the Commission considers relevant to the Tribunal's assessment of Tabcorp's application.
16. Tabcorp, Tatts, the Commission and the Interveners file with the Tribunal and serve on each other any reply evidence by no later than Tuesday 17 October 2017.

### **Submissions**

17. Tabcorp, Tatts, the Commission and the Interveners file with the Tribunal and serve on each other any written submissions by no later than Friday 20 October 2017.
18. Tabcorp, Tatts, the Commission and the Interveners file with the Tribunal and serve on each other any written reply submissions by no later than Monday 23 October 2017.

### **Hearing**

19. Any hearing of this Proceeding if necessary to commence on Tuesday 24 October 2017 for 2 days.

### **Other matters**

20. Any notice given, or materials that are filed and served in the Proceeding may be given or filed and served by email to the following email addresses:
  - (a) Email address for the Tribunal is [registry@competitiontribunal.gov.au](mailto:registry@competitiontribunal.gov.au)
  - (b) Email addresses for Tabcorp are [Grant.Marjoribanks@hsf.com](mailto:Grant.Marjoribanks@hsf.com) and [smuys@gtlaw.com.au](mailto:smuys@gtlaw.com.au)
  - (c) Email address for the Commission is [Simon.Uthmeyer@dlapiper.com](mailto:Simon.Uthmeyer@dlapiper.com)
  - (d) Email address for Tatts is [mcorrigan@claytonutz.com](mailto:mcorrigan@claytonutz.com)



- (e) Email addresses for CrownBet are [geoff.carter@minterellison.com](mailto:geoff.carter@minterellison.com) and [glen.ward@minterellison.com](mailto:glen.ward@minterellison.com)
  - (f) Email addresses for the Racing Victoria Interveners are [njtaylor@jonesday.com](mailto:njtaylor@jonesday.com) and [prudence.smith@jonesday.com](mailto:prudence.smith@jonesday.com)
  - (g) Email addresses for Racing.com are [john.kench@jws.com.au](mailto:john.kench@jws.com.au) and [michele.laidlaw@jws.com.au](mailto:michele.laidlaw@jws.com.au)
21. Any communication to the Tribunal is to be copied to all other parties by email to the email addresses in order 20, unless the Tribunal otherwise orders.
22. Tabcorp, Tatts, the Commission, any Intervener, and any interested person are to have general liberty to apply for further directions.

Date entered: 3 October 2017



A handwritten signature in blue ink, consisting of a stylized 'R' followed by a '4'.

REGISTRAR  
Australian Competition Tribunal

## Confidentiality Undertaking A

No. ACT 3 of 2017

Australian Competition Tribunal

### Re: Application by Tabcorp Holdings Limited under section 95AU of the Competition and Consumer Act (Cth)

I, **[name]**, **[occupation]**, of **[address]**, on **[date]** hereby undertake to the Tribunal and to each Confidentiality Claimant (but in relation to that Confidentiality Claimant's Confidential Information only) as follows:

1. In this undertaking:
  - (a) **Commission** means the Australian Competition and Consumer Commission.
  - (b) **Confidential Information** means all information filed with the Tribunal in the Proceeding in respect of which a claim of confidentiality has been made and which has been made and not refused by the Tribunal and which has been marked 'Extra-Highly Confidential'.
  - (c) **Confidentiality Claimant** means, in respect of particular Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
  - (d) **Confidentiality Directions** means the directions of the Tribunal in the Proceeding dated [date], a copy of which marked "Annexure A" is annexed to this undertaking.
  - (e) **CrownBet** means CrownBet Pty Ltd.
  - (f) **Proceeding** means ACT 3 of 2017 (including any appeals from a decision of the Tribunal in the Proceeding).
  - (g) **Racing.com** means Racing.com Pty Ltd.
  - (h) **Tabcorp** means Tabcorp Holdings Limited.

- (i) **Tatts** means Tatts Group Limited.
  - (j) **Tribunal** means Australian Competition Tribunal.
  - (k) **Victorian Racing Interveners** means Racing Victoria Limited, Harness Racing Victoria and Greyhound Racing Victoria.
2. I will not use the Confidential Information for any purpose other than my work in respect of the Proceeding.
  3. In the event that I receive instructions to act for Tabcorp or Tatts in relation to any matter relating to or connected in any way with any of CrownBet Pty Ltd, the Victoria Racing Interveners or Racing.com, I will (within 3 days of receiving those instructions) notify the solicitors acting for that party. This obligation continues for 5 years from the date of final determination of the Proceeding.
  4. I will keep the Confidential Information confidential and will not disclose the Confidential Information directly or indirectly to any person, other than the persons permitted to access such information pursuant to the directions 6 and 7 of the Confidentiality Directions or pursuant to any other directions of the Tribunal in the Proceeding related to confidentiality.
  5. To the extent that I have Confidential Information, I will:
    - (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
    - (b) keep the Confidential Information under my effective control; and
    - (c) immediately notify the Confidentiality Claimant in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information, of which I become aware and provide any reasonable assistance requested by the Confidentiality Claimant in relation to any action that the Confidentiality Claimant may take against any person for such unauthorised use or disclosure.
  6. Following the final determination of the Proceeding, I will do one of the following:
    - (a) continue to maintain the Confidential Information under my effective control and safeguard it from unauthorised access or use; or
    - (b) destroy the Confidential Information in my possession, custody or control; or

- (c) return or cause to be returned the Confidential Information in my possession, custody or control, to the Confidentiality Claimant (or its solicitors).
7. I may only vary the terms of this undertaking with the prior written consent of the Confidentiality Claimant (or its solicitors) or by order of the Tribunal.
8. I acknowledge that my obligations in paragraphs 2, 3, 4, 5, 6, 7, 9 and 10 of this undertaking will continue after the final determination of the Proceeding and the destruction or return of the Confidential Information to the Confidentiality Claimant (or its solicitors).
9. I acknowledge that damages are not an adequate remedy for the breach of my obligations in this undertaking and that the Confidentiality Claimant shall be entitled to equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.
10. I irrevocably submit to the jurisdiction of the Tribunal for the purposes of enforcing the terms of this undertaking, which are governed by the laws of the State of Victoria.

**SIGNED** by **[name]** in the presence of: \_\_\_\_\_

Signature of **[name]**

\_\_\_\_\_

Signature of witness, whose name and address appears below.

## Confidentiality Undertaking B

No. ACT 3 of 2017

Australian Competition Tribunal

### Re: Application by Tabcorp Holdings Limited under section 95AU of the Competition and Consumer Act (Cth)

I, **[insert]**, of **[insert]**, on **[insert]** hereby undertake to the Tribunal and to each Confidentiality Claimant (but in relation to that Confidentiality Claimant's Confidential Information only) as follows:

1. In this undertaking:
  - (a) **Commission** means the Australian Competition and Consumer Commission.
  - (b) **Confidential Information** means all information filed with the Tribunal in the Proceeding in respect of which a claim of confidentiality has been made and which has been made and not refused by the Tribunal and which has been marked 'Extra-Highly Confidential'.
  - (c) **Confidentiality Claimant** means, in respect of particular Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
  - (d) **Confidentiality Directions** means the directions of the Tribunal in the Proceeding dated [date], a copy of which marked "Annexure A" is annexed to this undertaking.
  - (e) **CrownBet** means CrownBet Pty Ltd.
  - (f) **Proceeding** means ACT 3 of 2017 (including any appeals from a decision of the Tribunal in the Proceeding).
  - (g) **Racing.com** means Racing.com Pty Ltd.
  - (h) **Tabcorp** means Tabcorp Holdings Limited.

- (i) **Tatts** means Tatts Group Limited.
  - (j) **Tribunal** means Australian Competition Tribunal.
  - (k) **Victorian Racing Interveners** means Racing Victoria Limited, Harness Racing Victoria and Greyhound Racing Victoria.
2. I will not use the Confidential Information for any purpose other than my work in respect of the Proceeding.
3. **[NOT USED]**.
4. I will keep the Confidential Information confidential and will not disclose the Confidential Information directly or indirectly to any person, other than the persons permitted to access such information pursuant to the directions 6 and 7 of the Confidentiality Directions or pursuant to any other directions of the Tribunal in the Proceeding related to confidentiality.
5. To the extent that I have Confidential Information, I will:
- (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
  - (b) keep the Confidential Information under my effective control; and
  - (c) immediately notify the Confidentiality Claimant in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information, of which I become aware and provide any reasonable assistance requested by the Confidentiality Claimant in relation to any action that the Confidentiality Claimant may take against any person for such unauthorised use or disclosure.
6. Following the final determination of the Proceeding, I will do one of the following:
- (a) continue to maintain the Confidential Information under my effective control and safeguard it from unauthorised access or use; or
  - (b) destroy the Confidential Information in my possession, custody or control; or
  - (c) return or cause to be returned the Confidential Information in my possession, custody or control, to the Confidentiality Claimant (or its solicitors).

7. I may only vary the terms of this undertaking with the prior written consent of the Confidentiality Claimant (or its solicitors) or by order of the Tribunal.
8. I acknowledge that my obligations in paragraphs 2, 3, 4, 5, 6, 7, 9 and 10 of this undertaking will continue after the final determination of the Proceeding and the destruction or return of the Confidential Information to the Confidentiality Claimant (or its solicitors).
9. I acknowledge that damages are not an adequate remedy for the breach of my obligations in this undertaking and that the Confidentiality Claimant shall be entitled to equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.
10. I irrevocably submit to the jurisdiction of the Tribunal for the purposes of enforcing the terms of this undertaking, which are governed by the laws of the State of Victoria.

**SIGNED** by **[name]** in the presence of: \_\_\_\_\_

Signature of **[name]**

\_\_\_\_\_  
Signature of witness, whose name and address appears below.

## Confidentiality Undertaking C

No. ACT 3 of 2017

Australian Competition Tribunal

### Re: Application by Tabcorp Holdings Limited under section 95AU of the Competition and Consumer Act (Cth)

I, **[insert]**, of **[insert]**, on **[insert]** hereby undertake to the Tribunal and to each Confidentiality Claimant (but in relation to that Confidentiality Claimant's Confidential Information only) as follows:

1. In this undertaking:
  - (a) **Commission** means the Australian Competition and Consumer Commission.
  - (b) **Confidential Information** means all information filed with the Tribunal in the Proceeding in respect of which a claim of confidentiality has been made and which has been made and not refused by the Tribunal and which has been marked either "Confidential" or 'HIGHLY Confidential'.
  - (c) **Confidentiality Claimant** means, in respect of particular Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
  - (d) **Confidentiality Directions** means the directions of the Tribunal in the Proceeding dated [date], a copy of which marked "Annexure A" is annexed to this undertaking.
  - (e) **CrownBet** means CrownBet Pty Ltd.
  - (f) **Proceeding** means ACT 3 of 2017 (including any appeals from a decision of the Tribunal in the Proceeding).
  - (g) **Racing.com** means Racing.com Pty Ltd.
  - (h) **Tabcorp** means Tabcorp Holdings Limited.

- (i) **Tatts** means Tatts Group Limited.
  - (j) **Tribunal** means Australian Competition Tribunal.
  - (k) **Victorian Racing Interveners** means Racing Victoria Limited, Harness Racing Victoria and Greyhound Racing Victoria.
2. I will not use the Confidential Information for any purpose other than my work in respect of the Proceeding.
3. I will keep the Confidential Information confidential and will not disclose the Confidential Information directly or indirectly to any person, other than:
- (a) in respect of Confidential Information marked 'HIGHLY Confidential', the persons permitted to access such information pursuant to the directions 3 and 4 of the Confidentiality Directions or pursuant to any other directions of the Tribunal in the Proceeding related to confidentiality; and
  - (b) in respect of Confidential Information marked 'Confidential', the persons permitted to access such information pursuant to the directions 3, 4 and 5 of the Confidentiality Directions or pursuant to any other directions of the Tribunal in the Proceeding related to confidentiality.
4. To the extent that I have Confidential Information, I will:
- (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
  - (b) keep the Confidential Information under my effective control; and
  - (c) immediately notify the Confidentiality Claimant in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information, of which I become aware and provide any reasonable assistance requested by the Confidentiality Claimant in relation to any action that the Confidentiality Claimant may take against any person for such unauthorised use or disclosure.
5. Following the final determination of the Proceeding, I will do one of the following:
- (a) continue to maintain the Confidential Information under my effective control and safeguard it from unauthorised access or use; or
  - (b) destroy the Confidential Information in my possession, custody or control; or

- (c) return or cause to be returned the Confidential Information in my possession, custody or control, to the Confidentiality Claimant (or its solicitors).
6. I may only vary the terms of this undertaking with the prior written consent of the Confidentiality Claimant (or its solicitors) or by order of the Tribunal.
7. I acknowledge that my obligations in paragraphs 2, 3, 4, 5, 6, 8 and 9 of this undertaking will continue after the final determination of the Proceeding and the destruction or return of the Confidential Information to the Confidentiality Claimant (or its solicitors).
8. I acknowledge that damages are not an adequate remedy for the breach of my obligations in this undertaking and that the Confidentiality Claimant shall be entitled to equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.
9. I irrevocably submit to the jurisdiction of the Tribunal for the purposes of enforcing the terms of this undertaking, which are governed by the laws of the State of Victoria.

**SIGNED** by **[name]** in the presence of: \_\_\_\_\_  
Signature of **[name]**

\_\_\_\_\_  
Signature of witness, whose name and address appears below.