

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT of 2017

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

Tabcorp Holdings Limited (Applicant)

Statement of: **Patrick Smith**  
Address: 199 Bishopgate London, United Kingdom  
Occupation: Partner, RBB Economics  
Date: 9 March 2017



The document contains confidential information which is indicated as follows:

[Confidential to Tabcorp] [.....]  
[HIGHLY Confidential to Tabcorp] [.....]  
[HIGHLY Confidential to Tatts] [.....]  
[HIGHLY Confidential to Tabcorp and Tatts] [.....]

---

Filed on behalf of Tabcorp Holdings Limited (Applicant)  
Prepared by Grant Marjoribanks  
Herbert Smith Freehills  
Tel (02) 9225 5517  
Email grant.marjoribanks@hsf.com  
Address for service Level 34  
161 Castlereagh Street  
Sydney NSW 2000  
AUSTRALIA

Fax (02) 9322 4000  
Ref 82602332



Tabcorp Holdings Limited and Tatts Group  
Limited  
Expert witness statement of Patrick Smith

## I. Introduction

1. This report has been prepared at the request of Herbert Smith Freehills, solicitors for Tabcorp Holdings Limited (“**Tabcorp**”). Herbert Smith Freehills have requested that I act as an independent expert to the Australian Competition Tribunal (the “**ACT**”), in relation to an application by Tabcorp to the Australian Competition Tribunal for merger authorization (the “**Proceedings**”) of its proposed merger (the “**proposed merger**”) with Tatts Group Limited (“**Tatts**”) (together, Tatts and Tabcorp are hereafter referred to as the “**parties**”). I set out below the specific questions that I have been asked to answer.
2. Exhibited to me at the time of signing this report and marked “Exhibit PS-1” is a bundle of documents. Also exhibited to me at the time of signing this report is a further bundle of documents marked “Confidential Exhibit PS-2”. Where in this report I refer to tabs in PS-1 or PS-2, I am referring to the tabs of Exhibit PS-1 and Confidential Exhibit PS-2 respectively. I also refer to documents by reference to their unique document number beginning with a “TBP” prefix. I understand that Tabcorp and Tatts claim confidentiality over Confidential Exhibit PS-2.
3. I am a Partner at RBB Economics, a firm that specialises in the economics of competition and regulation. I have extensive experience as an expert on economic issues in the racing, wagering and sports betting industry, and in testifying as an expert in a variety of court and arbitration forums. I was a testifying expert in the linked transactions, *Thoroughbred Horseracing Trust/Kenilworth Racing* and *Gold Circle/Kenilworth Racing*, which were considered by the South African competition authorities as the acquisition by the largest horseracing administrator and the exclusive tote operator in 7 out of 9 provinces in South Africa, Phumelela, of control over the horseracing administrator and exclusive tote operator in an 8th province, Kenilworth Racing. I have submitted expert reports in two further High Court actions and in further actions before the competition authorities, relating to collective pricing of the audio-visual coverage of horseracing, and

## Confidential Restriction on Publication Claimed

the competitive effects of tote operators offering nationally and internationally commingled horse and sports betting products. I analysed the acquisition by Phumelela, a significant tote and fixed odds operator, of Supabets, a fixed odds sports betting operator. I have also analysed a number of potential alternative commercial arrangements which ultimately resulted in the reorganisation of the licensing of UK horseracing media rights. My credentials are provided at **Tab 1** of **PS-1 [TBP.001.027.2028]**. My business address is 199 Bishopsgate, London, EC2M 3TY, United Kingdom.

4. I have read the Expert Evidence Practice Note (GPN-EXPT), which is contained at **Tab 2** of **PS-1 [TBP.001.027.2039]**, and the Federal Court Harmonised Expert Witness Code of Conduct which is attached to the Engagement Letter from Herbert Smith Freehills dated 1 December 2016 at **Tab 3** of **PS-1 [TBP.001.027.5183]**, and I confirm that I agree to abide by it. In particular, I understand that my duty in providing written reports and giving evidence is to assist the Court impartially on matters relevant to the area of my expertise, and that this duty overrides any obligation to the party from whom I have received instructions. I confirm that I have complied and will comply with this duty.
5. I have been instructed to answer the following questions concerning the proposed merger:<sup>1</sup>
  - 5.1. What are the economic principles and methodologies relevant to assessing the competitive effects and total economic welfare effects of the proposed merger on the racing industry in Australia?
  - 5.2. What are the likely competitive effects and the likely effects on total economic welfare of the proposed merger on the racing industry in Australia?

---

<sup>1</sup> See 'Instruction letter (Patrick Smith) – 6 March 2017', page 1 (**Tab 7** of **PS-1 [TBP.001.029.0005]**).

**Confidential Restriction on Publication Claimed**

6. In the process of producing this report I have reviewed and relied on the Assumptions provided to me, and listed at **Tab 1 of PS-2 [TBP.001.027.1974]** is a version of those assumptions in which the confidentiality markings have been updated (“**Assumptions**”), and the documents provided to me by Herbert Smith Freehills and listed at **Tabs 4, 5 and 6 of PS-1 [TBP.011.001.0110, TBP.006.001.0121, TBP.004.011.0610]** and **Tabs 2 – 39 of PS-2 [TBP.001.018.5686, TBP.001.027.2115, TBP.001.022.0002, TBP.015.001.1838, TBP.015.001.1839, TBP.015.001.1840, TBP.015.001.1841, TBP.015.001.1842, TBP.015.001.1843, TBP.015.001.4244, TBP.015.001.4245, TBP.015.001.4246, TBP.015.001.4247, TBP.015.001.4248, TBP.015.001.4249, TBP.015.001.4250, TBP.015.001.4251, TBP.015.001.4252, TBP.015.001.4253, TBP.015.001.4254, TBP.015.001.4255, TBP.015.001.4256, TBP.015.001.4257, TBP.015.001.4258, TBP.015.001.4259, TBP.015.001.4260, TBP.015.001.4261, TBP.015.001.4262, TBP.015.001.4263, TBP.015.001.4264, TBP.015.001.4265, TBP.015.001.4266, TBP.015.001.5185, TBP.015.001.3788, TBP.015.001.3789, TBP.015.001.3790, TBP.015.001.1826 and TBP.015.001.3737]**, as directed in the Letter of Instructions at **Tab 7 of PS-1** . A list of the other sources I have relied upon in this report is contained at **Annex 2** of this report.
7. Finally, in preparing this report, I have been assisted by Chris Whelan, Senior Associate at RBB Economics, and Jonathan Adams, Aniek Linssen, Mohsin Raza, and Alex Suchanek, Associates at RBB Economics. They have assisted me in preparing the data analyses contained in this report.



Signed \_\_\_\_\_

Patrick Smith

Dated 9 March 2017

## **II. Executive summary of opinions**

8. This report assesses the likely impact of the proposed merger on:
  - 8.1. competition in racing wagering services offered to punters in Australia;
  - 8.2. funding for thoroughbred horseracing, harness horseracing and greyhound racing (collectively, "racing"); and
  - 8.3. total economic welfare for the racing industry (including racing providers, racing wagering service providers and punters) in Australia.

### **II.A. Competition in racing wagering services**

9. The net effect of the proposed merger on competition in racing wagering services depends on the balance between two effects:
  - 9.1. first, the effect arising from any loss of direct competition between the parties' operations, in particular the parties' online and phone wagering operations, and
  - 9.2. second, the effect on competition amongst the merged entity and other wagering operators, in particular corporate bookmakers, but also other on-course wagering operators and operators of other betting and gambling services.
10. The parties only compete with each other to a limited extent.
  - 10.1. The parties' on-course and retail wagering services are offered in different states and territories (Tabcorp in New South Wales, Victoria and the ACT; Tatts in Queensland, South Australia, Tasmania and the Northern Territory) and so the parties are unlikely to compete significantly with one another in these channels. The primary scope for competition between the parties is in phone and online

## Confidential Restriction on Publication Claimed

channels, where each of the parties' wagering services are offered to punters across Australia.

10.2. However, even in the phone and online channels, the **[HIGHLY confidential to Tabcorp and Tatts]** [REDACTED] punters who choose to bet with either of the parties, choose to place their bets with the party that is the local retail licensee in their state of domicile. Over **[HIGHLY confidential to Tabcorp and Tatts]** [REDACTED] of online and phone tote racing bets placed by punters domiciled in New South Wales, Victoria and the ACT are placed into Tabcorp tote pools; while just under **[HIGHLY confidential to Tabcorp and Tatts]** [REDACTED] of online and phone tote racing bets placed by punters domiciled in South Australia, Queensland, the Northern Territory, and Tasmania are placed into Tatts pools.

10.3. A **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of Tabcorp and Tatts' punters choose to place online and phone tote bets in the tote pools of the party that is not their local retail licensee. This proportion of wagering activity does not appear to respond to the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] pool sizes between the Tabcorp and Tatts pools. I am not aware of obvious options available to Tatts that could significantly affect the relative pool sizes of the Tatts pool and the Tabcorp pools. The **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of punters that choose to place online and phone tote bets in the tote pools of the party that is not their local retail licensee may significantly comprise large punters. Large punters are likely to be most aware of the benefits of betting into deeper pools, and betting into multiple pools for the same betting opportunity, as large bets will have the greatest negative effects on tote payout rates for the punter concerned, especially within smaller pools. In the case of large punters betting across pools in order to achieve the benefits of co-mingling, these different tote pools would not be competing with one another, but rather offering the same punter two independent

## Confidential Restriction on Publication Claimed

pools in which to place his bets, to allow him to spread the effect of his bets across the different pools.

10.4. Punters that choose to place bets in the tote pools of the party that is not their local retail licensee are more likely to be better informed regarding their online options for wagering on racing. In the first instance, this **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of punters already display an awareness of options to place bets with out-of-state operators. In particular for large punters, that have the strongest incentives to place bets into multiple pools, and that often bet into all Australian tote pools (and some international pools), this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.

10.5. Similarly, a **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of Tabcorp and Tatts' punters choose to place online and phone fixed odds bets with the party that is not their local retail licensee. This **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of punters may significantly comprise larger and more successful punters. Larger and more successful punters have the greatest incentives to place fixed odds bets with multiple fixed odds operations over time. There are indications that the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of punters who choose to place fixed odds bets with the party that is not their local retail licensee **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] payout rates, and accordingly are likely to be more successful punters, who would have the strongest incentives to be aware of, and utilise alternative fixed odds operations over time. In particular for larger and more successful punters, this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.

## Confidential Restriction on Publication Claimed

- 10.6. The parties' offerings are significantly differentiated. The tote pools operated by the parties are of different sizes, with Tatts offering far smaller pools than those offered by Tabcorp, even only considering local contributions – international co-mingling arrangements make the Tabcorp pools even larger. The parties' average fixed odds payout rates are different, and do not appear to respond to one another.
- 10.7. There is limited scope for competition between the parties' racing wagering services, and the parties are relatively distant competitors with one another, even in the online and phone channels.
11. The merged entity will continue to compete with numerous other large and well-resourced wagering service providers.
- 11.1. Corporate bookmakers offer punters fixed odds and tote derivative fixed odds wagering services in the online and phone channels. A number of odds comparison services exist that directly compare odds available across various fixed odds and tote services, for any given racing event. The parties compete with corporate bookmakers, who collectively account for significantly larger turnover than the parties, and have grown faster than the parties over the past few years. Corporate bookmakers operate solely online and via phone, and accordingly have limited incremental costs of expansion. Corporate bookmakers include rivals owned by multinational bookmakers with access to substantial funding for promotion and expansion, such as Paddy Power (which acquired Betfair Group plc in 2016), Bet365, William Hill, Unibet, and Ladbrokes.
- 11.2. In contrast to the parties, which only overlap to a limited extent, and each only achieve **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] online and phone racing wagering turnovers in states in which the relevant party is not the local retail licensee, the corporate bookmakers are likely to achieve online and phone racing wagering turnovers that are **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED]



**II.B. Funding for racing**

14. Racing associations stage race meetings and provide racing and training facilities, and other infrastructure for their respective races. They also provide prize money or “stakes” and other subsidies to ensure participation in the sport.
15. The parties are the most significant contributors towards funding for the racing industry, and, in turn, the parties are the most heavily dependent on high quality racing, on which to offer wagering opportunities to punters.
16. Assessing the likely impact of the proposed merger on funding for the racing industry requires considering the result of two main dynamics.
  - 16.1. The effect of the merger on wagering turnover and revenues generated by the parties, for a given relationship between wagering revenues and funding for racing. In many states, funding for racing is linked to wagering revenues, such that higher tote wagering revenues lead directly to higher funding for the racing industry.<sup>2</sup>
  - 16.2. The effect of the merger on the bargaining dynamic that gives rise to the relationship between wagering revenues and the contributions to the racing industry.
17. The relationships between wagering revenues and funding for racing are the result of negotiations involving multiple parties, over a long period of time, and are expected to continue for the foreseeable future. Moreover, I have not seen any evidence that the history of consolidation amongst the state licensed wagering operators has led to any shift against the funding of the racing industry. Accordingly, the effect of the merger on wagering turnover and revenues generated by the parties is likely to dominate. It is likely that the merger will result in an increase in wagering turnover and revenues of the merged entity, relative to the counterfactual. Even if a significant part of this increase in

---

<sup>2</sup> [Confidential to Tabcorp] [REDACTED]. See Assumptions, paragraph 90(c) (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

the parties' wagering turnover and revenues is at the expense of those of the corporate bookmakers, this would result in an increase in funding for the racing industry, as the parties have obligations to make proportionally higher contributions to the funding of racing than the corporate bookmakers.

18. The merger is unlikely to harm funding for racing, but rather is likely to enhance it, with an incremental contribution by the parties of at least [Confidential to Tabcorp] [REDACTED] [REDACTED].<sup>3</sup>

### II.C. Total economic welfare for the racing industry

19. The impact of the proposed merger on total economic welfare for the racing industry (including racing providers, racing wagering service providers and punters) depends on the two effects described previously – the effect on competition, and the effect on funding for the racing industry, as well as the potential for further efficiencies that are not relevant to the competition or funding analyses.
20. The merger is unlikely to lead to any significant harm to competition, but rather is likely to give rise to a number of efficiencies and product quality enhancements that would make the merged entity a more effective competitor against the corporate bookmakers. The ultimate impact on total economic welfare is likely to be positive, given that the anticipated efficiencies are expected to be net positive in terms of industry turnover (output), and profitability.
21. The merger is unlikely to harm funding for racing, but rather is likely to enhance it. The merger is likely to result in a significant increase of the turnover and revenue of the merged entity relative to the counterfactual, which would lead to additional funding for racing. Additional funding is likely to be applied to investments in the racing industry and stakes and other prize money that are used to attract owners, trainers and jockeys. The

---

<sup>3</sup> See Assumptions, paragraph 186 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

ultimate impact on economic welfare will depend on the multipliers that would apply to this additional funding, within the racing and associated industries.

22. The proposed merger is likely to give rise to a number of efficiencies that are likely to increase the turnover and revenues generated by the merged entity, relative to the parties under the relevant counterfactual. Some of these efficiencies are likely to result in benefits to consumers through enhancing the effectiveness of the merged entity in competing with the corporate bookmakers. However, some of these synergies are less likely to be directly passed on to benefit consumers, and will more likely be a direct benefit for the merged entity. To the extent that any of these savings are not passed on, they would accrue to the merged entity (and its shareholders) as additional profits.
  
23. The additional wagering revenues (and resulting profitability) will also result in higher fees and taxes paid by the parties to a wider set of stakeholders, outside of racing. In particular, other sporting bodies will receive an additional **[Confidential to Tabcorp]** [REDACTED], retail wagering venues, such as pubs, clubs and agencies, will receive an additional **[Confidential to Tabcorp]** [REDACTED], and state and federal governments will receive an additional **[Confidential to Tabcorp]** [REDACTED].<sup>4</sup>

---

<sup>4</sup> See Assumptions, paragraph 182 (Tab 1 of PS-2 [TBP.001.027.1974]).

**II.D. Outline**

24. The remainder of this report is structured as follows:

24.1. section III assesses the likely effects of the proposed merger on competition in racing wagering services offered to punters in Australia;

24.2. section IV assesses the likely effects of the proposed merger on funding for racing;  
and

24.3. section V assesses the likely effects of the proposed merger on total economic welfare for the racing industry in Australia.

### **III. Competition in racing wagering services**

#### **III.A. Introduction**

25. This section assesses the likely effects of the proposed merger on competition in wagering services offered to punters in Australia:

25.1. section III.B describes the framework for the assessment;

25.2. section III.C describes the parties' activities;

25.3. section III.D assesses the nature of competition;

25.4. section III.E assesses the scope for competition;

25.5. section III.F assesses competition between the parties;

25.6. section III.G assesses competition between the parties and corporate bookmakers;

25.7. section III.H assesses efficiencies; and

25.8. section III.I concludes.

#### **III.B. Framework for the assessment**

26. The net effect of the proposed merger on competition in racing wagering services depends on the balance between two effects.

26.1. First, the loss of direct competition between the parties' operations, in particular the parties' online and phone operations.

26.2. Second, the effect on competition amongst the merged entity and other wagering operators. The proposed merger may make the merged entity a more effective competitor through allowing it to invest in improving the quality of its retail and

## Confidential Restriction on Publication Claimed

online wagering offerings, introducing a wider variety of new bet types, and co-mingling to offer punters the opportunity to bet in deeper and more stable tote pools. Additionally, a merger might result in lower costs that might be passed on to consumers in the form of higher quality or lower prices.

27. The two key parts of the assessment framework are assessing the nature and scope of competitive interactions, and then assessing the likely effects of the proposed merger on competition, in the light of those initial observations. I discuss each part of the analysis in turn below.

### III.B.i. The nature and scope of competitive interaction

28. When considering the likely effect of a merger on competition, it is typically necessary to first consider the scope for competitive interaction between each of the merging parties' products or services and those of rivals. Market definition can be a useful first step in identifying the most significant sources of competitive constraints. The purpose of market definition is to inform the competitive assessment, and market definition should be undertaken with the ultimate competitive assessment in mind.<sup>5</sup>
29. The standard approach to market definition is to consider substitutability amongst a candidate set of goods or services, typically in response to changes in their relative prices. A common thought experiment is the small but significant non-transitory increase in price ("SSNIP") test. This test starts with a candidate set of goods or services (considered in each of a product dimension, and a geographic dimension) and assesses

---

<sup>5</sup> See Vickers, John, then Director General of Fair Trading, "Competition economics and policy: A speech on the occasion of the launch of the new social sciences building at Oxford University" located at [http://webarchive.nationalarchives.gov.uk/20100113210150/http://oft.gov.uk/shared\\_oft/speeches/spe0702.pdf](http://webarchive.nationalarchives.gov.uk/20100113210150/http://oft.gov.uk/shared_oft/speeches/spe0702.pdf) which states the following: "The core purpose of market definition, then, is to help assess questions about market power, or in the case of mergers, changes in market power" (page 10); and "Pitfalls of market definition occur if its purpose is forgotten. Then substantive conclusions can turn hazardously on definitions... How people define the market has no effect on the competitive reality, just as whether or not they wear glasses has no effect on the weather" (page 12).

## Confidential Restriction on Publication Claimed

whether a hypothetical monopolist who sold these products would be able to profitably raise prices by a small but significant amount (for example, 5%).<sup>6</sup>

30. If the competitive constraints arising from demand-side or supply-side substitutes lying outside of the candidate market are strong enough, the hypothetical monopoly would lose sales to these substitutes in sufficient numbers to render its price increase unprofitable.<sup>7</sup> This would then indicate that the market should be widened to include products or geographic areas previously outside of the candidate market and to which the switching was occurring.
31. It is not necessary that all, or even a majority of customers, would switch in response to a price increase. Rather, the focus of the SSNIP test is on the marginal customers that are the most likely to switch in the event of a price rise. It is sufficient that enough demand switches so that the profit lost due to the reduced volume of sales outweighs the extra margin gained on retained sales due to the price increase.<sup>8</sup> Even if the majority of customers would not switch in response to a SSNIP, the market may nonetheless be broad if the value of sales represented by marginal customers (i.e. those that would switch) is sufficiently significant.
32. The relevant market can contain products that are significantly differentiated.<sup>9</sup> For example, different brands of running shoes may be viewed as non-identical in the eyes of consumers, and yet the relevant market may be one for all running shoes because a hypothetical monopolist of one brand of running shoes would not be able to profitably

---

<sup>6</sup> See ACCC "Merger guidelines" November 2008 paragraphs 4.6 and 4.19-4.22.

<sup>7</sup> Demand side substitution refers to the willingness and ability of buyers to switch to alternative products from those in candidate market in response to a change in relative prices. Supply side substitution refers to the ability of suppliers of products outside of the candidate market to quickly and easily begin supplying products that compete with those in the candidate market in response to a price increase. For a rival supplier to be considered an effective supply side constraint, it should be able to supply the products in question without incurring significant additional (sunk) costs in doing so.

<sup>8</sup> The only exception to this arises if suppliers are able to price discriminate against those customers that are not able to easily switch between products: in this case it may be appropriate to define the market more narrowly (to only those customers that can be identified as unable to engage in demand side substitution).

<sup>9</sup> See ACCC, 'Merger guidelines', November 2008, paragraphs 4.33-4.34.

## Confidential Restriction on Publication Claimed

raise prices by 5% because of the extent of consumer switching this would induce to rival brands.

33. Even if some products are not included in the relevant market, they might still impose a competitive constraint, for example, because the supplier of that product may be able to enter the relevant market in a timely manner or because customers see that product as a sufficiently good substitute.<sup>10</sup>
34. While the SSNIP test refers to price, firms may actually compete on a broader set of product attributes (such as quality, range and service).<sup>11</sup> The test could equally be applied in terms of a deterioration in another competitive parameter, such as quality, range or service, in particular if price is not an important factor in consumers' choice.
35. While the intuition behind the SSNIP test is clear, in many cases there simply are not sufficient data available to definitively conclude on a precise market definition, calibrated according to some variant of a hypothetical monopolist, or SSNIP, test. However, it may not be necessary to come to a definitive conclusion on market definition in order to allow a proper assessment of the likely impact of a merger on competition – it may be sufficient to analyse the likely competitive effect of a merger following an assessment of the nature and scope for competition that is relevant to each party's products or services.

### III.B.ii. The competitive assessment

36. The competitive assessment takes into account the following features that are likely to determine whether the merger will lead to a substantial lessening of competition or not:

---

<sup>10</sup> See ACCC, 'Merger guidelines', November 2008, paragraph 5.16, which specifies that if entry occurs within one to two years, a merger is less likely to lead to an increase in unilateral market power for the merging parties.

<sup>11</sup> See ACCC, 'Merger guidelines', November 2008, para. 3.1. Similarly, competition authorities in other jurisdictions recognise that competition may take place over non-price elements of competition. For example, the UK's OFT states that "where products are differentiated, undertakings compete not only on price but also on features such as quality, service, convenience and innovation" (OFT, Assessment of market power, 2004, para. 5.34).

## Confidential Restriction on Publication Claimed

- 36.1. whether the parties compete with one another, i.e. whether they provide substitute products;
  - 36.2. if they do provide substitute products, whether they are “close competitors” or not;<sup>12</sup>
  - 36.3. which other firms the parties compete with; and
  - 36.4. whether any attempt to raise prices (or worsen quality, range or service) would lead to expansion or product repositioning from existing market participants or entry by new firms, such that the price increase would not be profitable.
37. Some efficiency gains are taken into account as part of the competitive assessment. In particular, if the merger leads to marginal cost efficiency savings, this will lead the merged firm to lower prices, other things being equal.<sup>13</sup> This may offset any incentive to raise price as a result of any loss of competition between the parties. As a result, a merger may not lead to a substantial lessening of competition (that is associated with higher prices or worse quality), even when it leads to a loss of direct competition between the merging firms.
38. The merger may also lead to efficiency savings that do not directly affect prices, but nevertheless lead to a gain in total economic welfare (because they raise the firm’s profits). These efficiency gains are assessed as part of the assessment of the proposed merger on total economic welfare for the racing industry in Australia.

---

<sup>12</sup> See ACCC, ‘Merger guidelines’, November 2008, paragraph 5.13, which states: “*Merger parties are likely to have an incentive to increase the price of one or both products if the sales lost due to the price increase would be recaptured by an increase in sales of the other product. That is, the greater the number of customers that regard the merger parties as particularly close competitors (for example, their first and second choices), the greater the potential for the merger parties to impose a unilateral increase in price post-merger.*”

<sup>13</sup> See RBB Economics “Cost pass-through: theory, measurement, and potential policy implications” in pages 29-30

### III.C. The parties' activities

39. The two parties to the proposed merger offer pari-mutuel (totalisator or "tote") and fixed-odds betting services to punters in Australia.<sup>14</sup> The parties offer wagering and tote betting in Australia, *on-course* (for example, at racing and sporting events), *off-course* (in retail outlets) in different states and territories, as well as via online and telephone betting throughout the country.<sup>15</sup>
40. Tabcorp supplies:
- 40.1. on-course and off-course wagering at bricks and mortar retail outlets known as TABs, or via TAB betting terminals at hotels pubs and clubs in New South Wales, Victoria and the ACT;
  - 40.2. online or telephone wagering nationally under the TAB brand; and
  - 40.3. online or telephone fixed odds wagering via Luxbet, a wholly owned corporate bookmaker licensed in the Northern Territory.<sup>16</sup>
41. Tatts supplies:
- 41.1. on-course and off-course wagering at "bricks and mortar" retail outlets commonly known as "the TAB" (or, more recently "UBET"), outlets in hotels, pubs and licensed clubs, and self-service terminals within those outlets, in Queensland, South Australia, Tasmania and the Northern Territory; and

---

<sup>14</sup> These terms are defined in the Assumptions at paragraphs 25 to 34 and 35 to 39 respectively (Tab 1 of PS-2 [TBP.001.027.1974]). For reference, *pari-mutuel betting* is a form of betting where the total betting pool is split between all punters on the winning ticket after a deduction of outcome. In this form of betting, the winnings of a winning ticket are not known *a priori*, as they will depend on the total number of people betting on the final outcome. The betting provider's revenue, or the difference between total turnover received from bets placed, and winnings paid to punters, is fixed irrespective of the outcome. Fixed-odds betting is a form of betting where the punter is offered a fixed-odd for betting in a particular outcome at the time of the betting. In this type of bet, the revenue for the betting provider will depend on the outcome and the amount of bets put on each of the possible outcomes.

<sup>15</sup> See Assumptions, paragraphs 101-116 (Tab 1 of PS-2 [TBP.001.027.1974]), for a description of the parties' wagering activities.

<sup>16</sup> See Assumptions, paragraph 3 (Tab 1 of PS-2 [TBP.001.027.1974]). Tabcorp's racing wagering services are supplied through its Wagering and Media division. In addition to the racing services mentioned, this division also broadcasts racing vision nationally on three Sky sports television channels, and operates Sky Sports radio in New South Wales and the ACT. Tabcorp also has a Keno division, which supplies Keno, a frequently run game of chance, and a Gaming Services division, which supplies various services related to electronic gaming machines (EGMs), often known as "poker machines".

## Confidential Restriction on Publication Claimed

- 41.2. online or telephone wagering nationally under the UBET brand.<sup>17</sup>
42. In Western Australia, totalisator betting is offered solely by the publicly owned Racing and Wagering Western Australia (“RWWA”).<sup>18</sup>
43. Other licensed bookmakers may offer fixed odds betting services on-course.<sup>19</sup>
44. Corporate bookmakers offer fixed odds bets through phone and online channels on many of the same underlying betting opportunities (for example, horse races) as those covered by the parties’ tote (and fixed odds) products.
45. If placing a tote or fixed odds bet on-course or at a physical off-course retail outlet, the punter must use an operator that has a license to provide wagering services through those channels in the relevant state or territory. The parties’ on-course and retail wagering services are offered in different states and territories (Tabcorp in New South Wales, Victoria and the ACT; Tatts in Queensland, South Australia, Tasmania and the Northern Territory) and so the parties are unlikely to compete with one another significantly in these channels.<sup>20</sup>
46. However, if placing any bet (tote or fixed odds) by phone or online, a punter can access any tote pool operated by Tabcorp or Tatts, and can access fixed odds wagering supplied by Tabcorp, Tatts or any corporate bookmaker.<sup>21</sup> The punter is also able to place fixed odds bets on racing courses or other sports events from authorized bookmakers.

---

<sup>17</sup> See Assumptions, paragraph 13 (**Tab 1 of PS-2 [TBP.001.027.1974]**). Tatts’ racing wagering services are supplied through its Wagering division. In addition to the racing services mentioned, this division also broadcasts sports and racing information on RadioTab in Queensland, South Australia, Tasmania and the Northern Territory. Tatts also has a Lotteries Division, which is Tatts’ main business, and includes selling lottery products in all states and territories of Australia, except Western Australia. Finally, Tatts has a Gaming Solutions division that supplies services related to EGMs. See Assumptions, paragraphs 13(d), 14, and 15 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

<sup>18</sup> See Assumptions, paragraph 54 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

<sup>19</sup> See Assumptions, paragraphs 51(c), 52(b), 53(c), 55(b), 56(b), 57(b) and 58(c) (**Tab 1 of PS-2 [TBP.001.027.1974]**).

<sup>20</sup> Limited exceptions to this could occur close to state borders (such as between New South Wales and Victoria), where Tabcorp and Tatts may operate “bricks and mortar” stores that are geographically close to one another.

<sup>21</sup> See Assumptions, paragraphs 111(c), 116(c), 119, 120, 126(c), and paragraphs 50-59 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

## **Confidential Restriction on Publication Claimed**

47. Accordingly, the primary scope for competition between the parties is in phone and online channels, where each of the parties' wagering products are offered to punters across Australia.

### **III.D. The nature of competition**

#### **III.D.i. Introduction**

48. In this section I set out some preliminary observations on the nature of competition, and my expectations of the likely drivers of competition between different wagering product types.
49. In summary, I expect that punters should be concerned about the potential for large payouts on wagering products (whether fixed odds or tote products). While punters may enjoy or derive entertainment value from the activity of wagering, punters should have regard to their ability to maximise their returns from wagering. The size of payouts to a given punter might be determined by the odds offered on relevant betting opportunities (which might be summarised by the average payout rates over time), and by the willingness of different wagering service providers to stand a given bet placed by a punter. I also consider that differences in the risks borne by different wagering service providers may influence the willingness of those wagering service providers to stand bets placed by particular punters.
50. I expect that the proportion of turnover that is returned to winning punters (payout rates) is likely to be a factor in punter choice, although it may be difficult to discern the effect of payout rates on punter behaviour, in particular over the short term.<sup>22</sup> Punters may consider other characteristics of different bet types when deciding whether to place tote or fixed odds bets; while on average the payout rates may be better for one bet type than another (e.g. fixed odds better than tote), the payout rates on individual outcomes might

---

<sup>22</sup> Payout rates refer to the amount paid out to punters relative to the amount of money they place in wagers.

## Confidential Restriction on Publication Claimed

sometimes be better for tote bets on some outcomes, and sometimes worse for tote bets on other outcomes; punters may still choose to bet into different types of wagering products over time. Moreover, I expect tote pool sizes to be an important factor in punter choice.

51. I also observe a number of significant trends in the industry, by which punter demand is increasing for some bet types or distribution channels, and decreasing for others. In particular, I consider trends in punter demand in regard to:

51.1. retail and online wagering;

51.2. fixed odds and tote wagering; and

51.3. racing and sports betting.

52. These trends might or might not be driven by competitive interactions, although these trends are likely to make it more difficult to isolate competitive interactions between different wagering products. It is more difficult to analyse potential interactions between two or more variables when each variable might exhibit strong trends potentially caused by other factors.

### **III.D.ii. Odds and payout rates**

53. The parties offer tote and fixed odds bet types in the same channels (for example, online), and, at least in respect of the most popular “win” and “place” bet types, current odds are quoted alongside one another for each of fixed odds and tote bet types for the same betting opportunities, for example the odds in respect of a given horse to win or place in a given race. Figure 1 shows the TAB online offering, for an example race, the Karaka 2017 Maiden, and shows that Tabcorp displays odds for its fixed odds and tote offerings alongside one another. For example, \$3.60 for Bint El Bedu to win on fixed odds versus \$3.80 for Bint El Bedu to win on the tote. In this context I would expect

## Confidential Restriction on Publication Claimed

punters to consider and compare the fixed odds and the current indicative tote odds for the same betting opportunity.

**Figure 1: Fixed and tote racing odds offered on the TAB website**

The screenshot shows the TAB website interface for a race. At the top, there are navigation tabs for different betting types: R Double, D Double, Quaddie, E Quaddie, BIG6, Parlay Formula, and Multi Leg Approx. Below this, there are race cards for R1 through R7. The selected race is R1, 'COUNTDOWN TO KARAKA 2017 MAIDEN', starting at 19:00. The race details include: 5h | 1400m | 3F-MDN | \$25,000 | EQ1 | Apprentices can claim | 2 Place Divs | FO Pays 6 Placings | Replays Not Available. There are also 'TIPS' from Adam Olszanski and a 'Best Overall' tip.

Below the race details, there are tabs for 'Win & Place', 'Quinella', 'Exacta', 'Trifecta', and 'First 4'. The 'Win & Place' tab is active, showing a table of runners with their respective odds. The table includes columns for 'No', 'Runner (Barrier)', 'Form', 'Weight', 'Sky Rating', 'Win', 'Place', 'Win', and 'Place' (representing fixed and tote odds respectively).

No	Runner (Barrier)	Form	Weight	Sky Rating	Win	Place	Win	Place
1	BINT EL BEDU (5) J C Newitt T M Price	-	57	-	3.60	1.75	3.80	2.30
2	CURATA PRINCESS (2) J S Wynne T D Wynne	f507x	57	79	SCR	SCR	SCR	SCR
3	ELOQUENT BELLE (4) J A Lynch T R Laing	f70x7	57	81	14.00	4.60	10.80	3.40
4	JOURNEYGIRL (3) J R Maloney T M Beer & M Hinton	f94	57	84	4.60	2.05	9.70	3.00
5	MILLIE THE MISSILE (4) J D Stackhouse T L Oliver	f2	57	95	SCR	SCR	SCR	SCR
6	MRS GARDENIA (1) J M Dee T D Weir	f5	57	93	3.90	1.85	3.40	2.70
7	PRETTY MAMA (2) J M Walker T N Blackiston	f3	57	100	2.90	1.55	2.30	1.04

At the bottom of the page, there are options for 'Field (All Runners)' and 'Mystery', and a 'Last Updated: 13:29:54' timestamp.

Source: [www.tab.com.au](http://www.tab.com.au), accessed on 20 January 2017.

54. Corporate bookmakers offer fixed odds wagering products, and also offer tote derivative fixed odds wagering products. These are fixed odds products that are not only based on the same underlying betting opportunities as those of the tote, but also pay odds that are directly derived from the dividend declared by a tote. Examples of tote derivative fixed odds betting products include “best of odds” (also called “Top Tote”), in which the bookmaker pays the best of the odds offered by different totalisator pools, and “home tote

## Confidential Restriction on Publication Claimed

odds”, in which the bookmaker pays the totalisator odds offered on the punter’s “home tote” (the tote in their state or territory) plus 5%.<sup>23</sup>

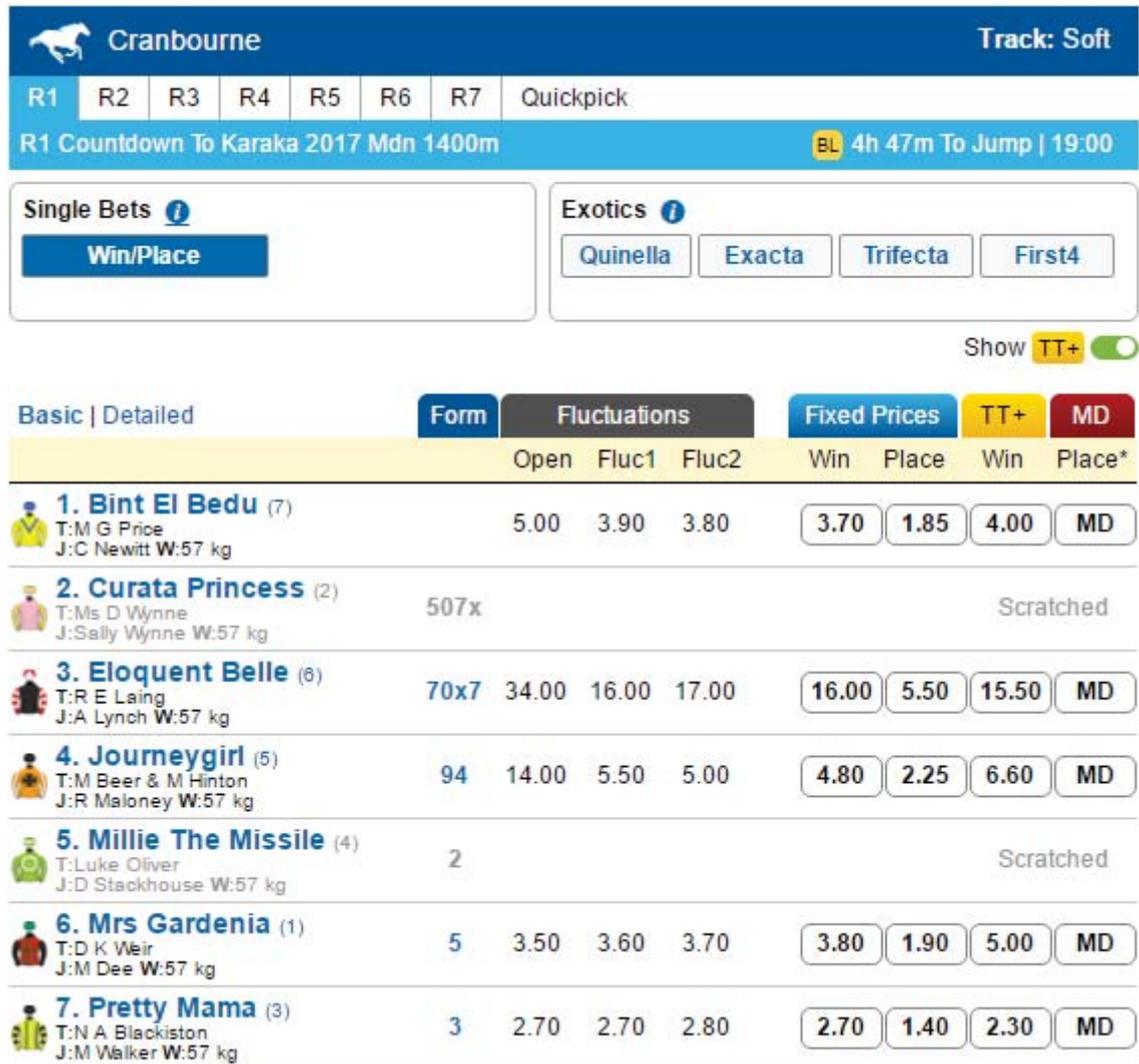
55. Corporate bookmakers also quote current odds alongside one another for each of fixed odds, and tote derivative fixed odds wagering products, such as “Top Tote”, “home tote odds”, or average of tote odds, for the same betting opportunities. Figure 2 shows the online offerings of the largest corporate bookmaker in Australia, Sportsbet, for the same example race, the Karaka 2017 Maiden. “TT+”, or “Top Tote Plus”, is a tote derivative fixed odds wagering product that pays the best of the dividends declared by the three Australian tote pools. Sportsbet displays odds for its fixed odds and tote derivative products alongside one another. For example, \$3.70 for Bint El Bedu to win on fixed odds versus \$4.00 for Bint El Bedu to win on the TT+ tote derivative product. In this context I would also expect punters to consider and compare the odds for fixed odds and for tote derivative products, for the same betting opportunity.

---

<sup>23</sup> See Assumptions, paragraphs 40-45 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

Figure 2: Fixed and tote derivative odds racing products offered on the Sportsbet website



Source: [www.sportsbet.com.au](http://www.sportsbet.com.au), accessed on 20 January 2017. Notes: "TT+" stands for "Top Tote Plus" and is described on the Sportsbet website as "[t]he better of the dividends declared by the three Australian TAB's or the Starting Price (SP). The Starting Price is not available on Top Tote place bets." "CB" stands for "Country Best" and is described on the Sportsbet website as "[t]he best dividend of the VIC and NSW TABs for Place and the place portion of Each-Way wagers at non metro racetracks".

56. A number of odds comparison services exist that directly compare odds available across various fixed odds and tote services, and some of these odds comparison websites, such as Punters.com.au, are popular websites, based on Google Trends data.<sup>24</sup> Figure 3

<sup>24</sup> See for example the [https://www.punters.com.au/odds-comparison/horse-racing/australia/cranbourne\\_92309/countdown-to-karaka-2017-maiden-plate\\_532972/](https://www.punters.com.au/odds-comparison/horse-racing/australia/cranbourne_92309/countdown-to-karaka-2017-maiden-plate_532972/) screenshot at Figure 3. See also the [https://www.bestodds.com.au/odds/horse-racing/united-kingdom/Kempton\\_91184/Smarter-Bets-With-Matchbook-Betting-Exchange-Handicap\\_527602/](https://www.bestodds.com.au/odds/horse-racing/united-kingdom/Kempton_91184/Smarter-Bets-With-Matchbook-Betting-Exchange-Handicap_527602/) screenshot at Tab 8 of PS-1. Considering data from Google Trends (see <https://www.google.com.au/trends/explore?q=Punters.com.au> screenshot at Tab 9 of PS-1,

## Confidential Restriction on Publication Claimed

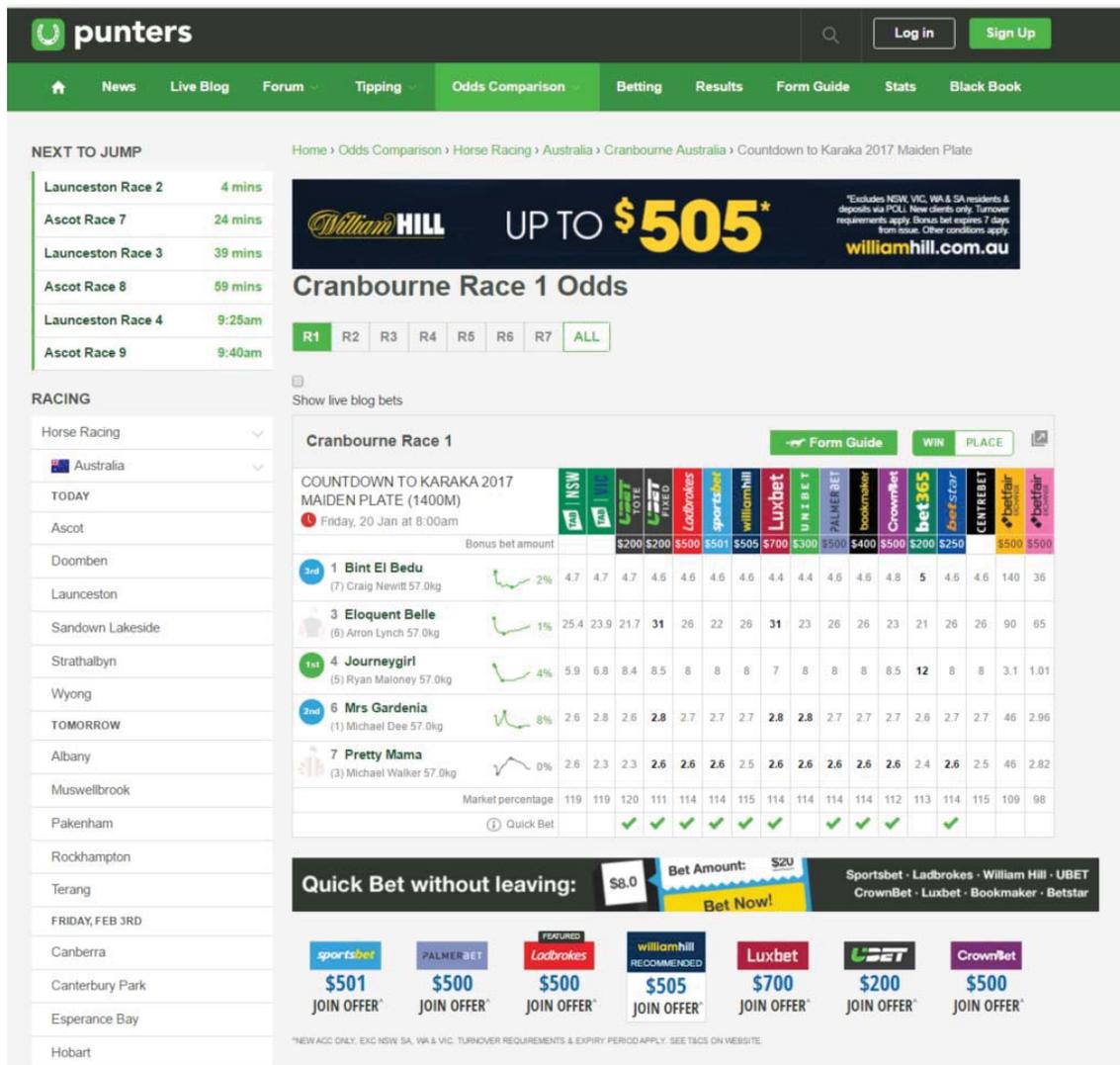
shows a screenshot from an odds comparison website, Punters.com.au, for the same example race, the Karaka 2017 Maiden. This screenshot was taken after the race, and so each of the fixed odds and tote odds had likely changed since the time of the previous two screenshots. Three different tote odds, and fixed odds from 14 different fixed odds and betting exchange offerings are shown alongside one another. Win odds are selected in this screenshot, which shows the best win odds for each horse in bold. For example, 5, offered by Bet365, is the best odds on horse Bint El Bedu to win, whereas the three tote odds were each 4.7 on this same outcome. The Punters website also includes promotional offers to join various corporate bookmaker and tote operator wagering platforms. In this context I would expect punters to consider and compare the odds offered across these different wagering service providers, for the same betting opportunity.

---

searches for "punters.com.au" have increased rapidly, have caught up and overtaken searches for "sportsbet.com.au", while searches for "tab.com.au" and "Ubet.com" lag well behind (see <https://www.google.com.au/trends/explore?date=2015-01-01%202017-02-01&q=punters.com.au,sportsbet.com.au,tabcorp.com.au,ubet.com> screenshot at **Tab 10 of PS-1**).

## Confidential Restriction on Publication Claimed

Figure 3: Odds comparisons shown on punters.com.au



Source: [https://www.punters.com.au/odds-comparison/horse-racing/australia/cranbourne\\_92309/countdown-to-karaka-2017-maiden-plate\\_532972/](https://www.punters.com.au/odds-comparison/horse-racing/australia/cranbourne_92309/countdown-to-karaka-2017-maiden-plate_532972/), accessed on 1 February 2017.

57. Accordingly, I would expect that the odds offered by different wagering service providers would play a role in competition.
58. If one service offered consistently higher odds on all betting outcomes than another service, then this would very likely translate into higher average payout rates over time. However, tote and fixed odds wagering products might show differences in odds offered that vary across different types of events, and different outcomes. Tote operators typically apply the same take-out rate for bets on each outcome (for example, each horse

## Confidential Restriction on Publication Claimed

wining a given race), whereas bookmakers provide fixed odds that are tailored to each outcome that punters can bet on, and depend on the bookmaker's knowledge of each outcome and appetite for risk. Accordingly, the tote might offer better odds than a fixed odds bookmaker on one horse winning a given race, and worse odds than the same fixed odds bookmaker on another horse winning the same race. By way of example, in the screenshot shown in Figure 1, above, the indicative tote odds for winning were better than the corresponding fixed odds on horses 1 and 4, but worse on horses 3, 6 and 7.

59. While I would expect odds to be a factor in punter choice, it may be difficult to discern the effect of average payout rates on punter behaviour, in particular over the short term. While on average the payout rates may be better for one bet type than another (e.g. fixed odds better than tote), the payout rates on individual outcomes might be sometimes better for tote bets on some outcomes, and sometimes worse for tote bets on other outcomes. Punters may still choose to bet into different types of wagering products over time depending on the odds offered for the events they are interested in betting on.

### III.D.iii. Characteristics of different bet types

60. A tote's revenue is not contingent on the racing result, and the tote operator has no financial interest in the outcome of the event on which bets are placed.<sup>25</sup> Instead, totalisator wagering involves punters betting against each other, rather than against the totalisator operator.<sup>26</sup> At the time that a bet is placed, punters do not know what the tote payout will be, on a given outcome – this is only determined later, after all bets have been placed.<sup>27</sup>
61. Fixed odds betting, by contrast, involves a punter betting against the bookmaker on the outcome of an event, and the punter knows the odds that will be paid at the time of

---

<sup>25</sup> See Assumptions, paragraph 32 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>26</sup> See Assumptions, paragraph 33 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>27</sup> See Assumptions, paragraphs 26-28 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

placing a bet.<sup>28</sup> The bookmaker takes on risk in accepting a fixed odds bet where odds are known and fixed at the time of placing the bet.<sup>29</sup> Bookmakers invest in customer risk management capabilities, and in particular may attempt to manage certain higher risk bet and customer types, monitoring customers' transactions and betting behaviours, which may result in bookmakers refusing to accept some types of bets, from some customers.<sup>30</sup>

62. These risk management functions may additionally affect punter demand for different bet types, in particular for larger or more successful punters.

### III.D.iv. Tote pool sizes

63. I would expect tote punters to value larger, more liquid tote pools. Larger pools increase punter confidence that the indicative dividends published at the time of placing a bet will be received.<sup>31</sup> Larger pools also mean that there is potentially more money available to distribute to winning customers, and deeper pools often allow the offer of more wagering products (such as wagering on international races, or more unusual, exotic bet types). Larger pools also make it less likely that the punter's own bet will significantly reduce the dividend payable.
64. In tote betting, the indicative dividends for each pool usually vary significantly from time to time from the opening of the pool for a particular race right up to the start of the race, and the final dividends often differ from the indicative dividends published before a punter places a bet. This is because subsequent bets invested into the pool will affect the final dividends to be paid.<sup>32</sup>
65. The influence that subsequent bets invested into the pool have on the final dividends is a function of the percentage of the total pool on each selection (e.g. a contestant in the

---

<sup>28</sup> See Assumptions, paragraph 35 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>29</sup> See Assumptions, paragraphs 22 and 36-38 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>30</sup> See Assumptions, paragraph 109 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>31</sup> See Assumptions, paragraphs 28-30, and 105 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>32</sup> See Assumptions, paragraph 27 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

race) and the size of the pool. The larger the pool, the smaller the effect of subsequent bets on the dividends or payout odds for earlier bets.<sup>33</sup>

66. By contrast, in smaller illiquid pools, large bets can significantly affect the pool, and can have a material impact on the final dividend, making the pool less attractive to punters.<sup>34</sup>
67. By way of example, in a race with two horses, A and B, in which two punters, 1 and 2 have each already placed \$100 on each horse, if horse A wins, the winning punter (1), will receive \$150 (total bets of \$200, less commission of 25%, or \$50). If a third punter (3) decided to place a further bet of \$200 on the same horse A, then this would destroy his own returns as well as the return to the first punter, even when backing the winning horse – the two winning punters would each receive only their initial investment (total bets of \$400, less commission of 25%, or \$100, to give a pool of \$300 split \$200 for punter 3, and \$100 for punter 1). Any larger bet would make this pool unprofitable, even for “winning” punters. If the pools were deeper, with, for example \$500 already placed on each horse (\$1,200 in total, including \$200 placed by punter 3), then the effect would still be noticeable, but would be significantly mitigated. Now, winning punters would at least receive \$1.29 for every \$1 placed on winning horse A.<sup>35</sup>
68. This also explains why totalisator operators enter into co-mingling arrangements with other totalisator operators to create larger pools. Tote providers would only co-mingle their tote pools, if it led to increased demand. In particular, the guest tote has to pay a fee, so would not be willing to do this unless it led to higher demand. Tabcorp has engaged in a number of co-mingling arrangements, separately in respect of each of the Victoria (SuperTAB) and NSW tote operations, in order to offer punters larger, more liquid

---

<sup>33</sup> See Assumptions, paragraph 28 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>34</sup> See Assumptions, paragraph 30 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>35</sup> With a commission rate of 25%, the commission on a pool of \$1,200 would be \$300. The pool after the commission would be \$900 (\$1,200 minus \$300). Thus the winning punters would receive \$900 relative to their total bets of \$700 (\$500 + \$200), or \$1.29 for every \$1 spent (\$900 divided by \$700).

## Confidential Restriction on Publication Claimed

pools; separately Tatts has engaged in co-mingling between the different Tatts tote pools.<sup>36</sup>

69. In response to the growth of corporate bookmakers, Tabcorp has entered into an agreement with Longitude to use its system to aggregate pools (for example, a quinella pool could be “merged” with an exacta pool to provide additional liquidity), for new bet types to be developed more quickly and at lower cost, and for approximate dividends to be displayed on exotic bet types which is not otherwise possible.<sup>37</sup>
70. Large punters often bet into all Australian totalisator pools on the same event, and can and do place bets with international totalisators.<sup>38</sup> This allows a single (large) punter, to achieve much of the benefits of co-mingling across these different pools.
71. Accordingly, I would expect tote pool size to be a factor in punter choice.

### III.D.v. Trends – retail and online wagering

72. A punter can choose to place a bet at the race-course, at a physical retail outlet, by phone or online. Wagering turnover has fallen in the retail and phone channels, and has grown in the online channels.
73. Figure 4 shows “TAB turnover” over the period FY 1990 to 2015. “TAB turnover” largely represents offline (retail) wagering turnover, and includes countrywide turnover from on-course totalisators, off-course totalisators (racing and FootyTAB), and fixed odds racing and sports betting undertaken in retail outlets.

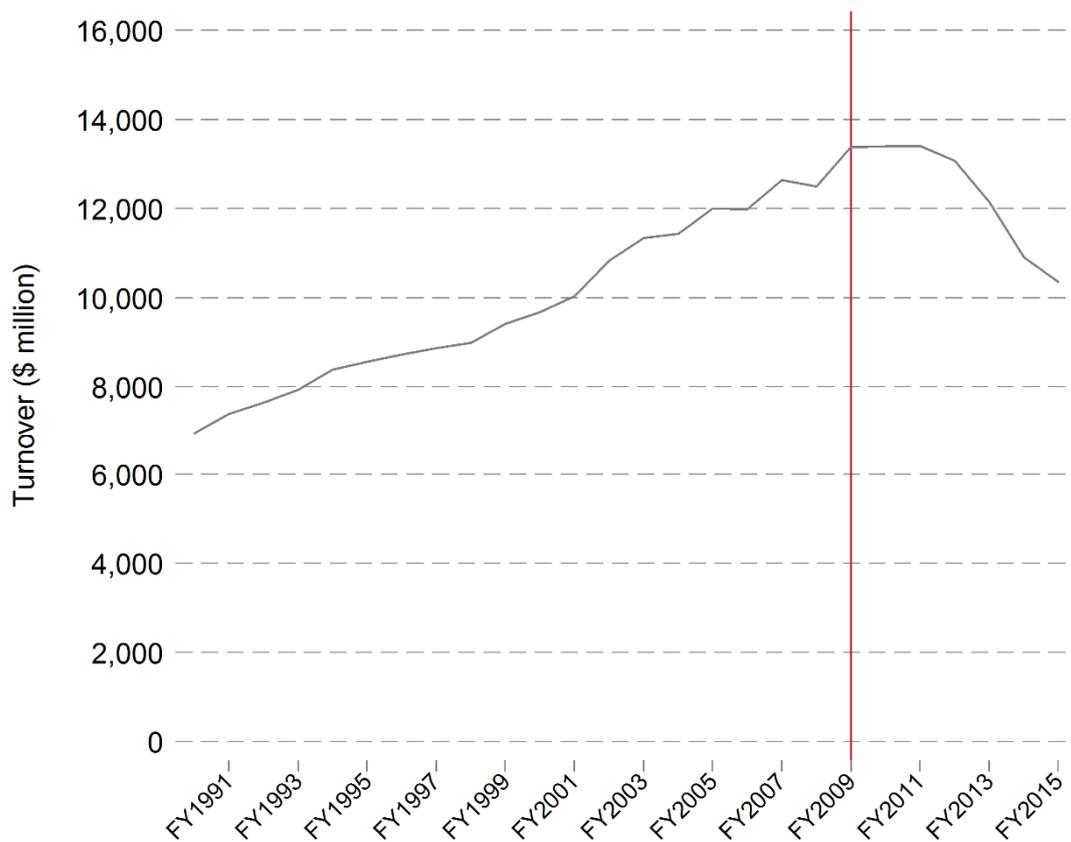
---

<sup>36</sup> See Assumptions, paragraphs 101 and 114 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>37</sup> See Assumptions, paragraph 146(e) and (h) (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>38</sup> See Assumptions, paragraph 34 (Tab 1 of PS-2 [TBP.001.027.1974]).

Figure 4: TAB turnover, FY 1990-2015



Source: RBB Economics analysis of Australian Gambling Statistics data, "TAB Turnover" (page 20). Note: Total turnover is incomplete in FY2014 and FY2015 due to unavailable figures for South Australia. Turnover figures are nominal.

- 74. TAB (retail and on-course) turnovers had grown significantly and consistently for almost 20 years, prior to 2008, although these turnovers then stabilise and decline significantly following this date.<sup>39</sup>
- 75. Figure 5 shows total wagering turnover (including racing and sports) in more detail, showing turnover for each distribution channel, but over a shorter period, from FY 2006 to FY 2015.

<sup>39</sup> Total turnover is incomplete in FY2014 and FY2015, because it excludes South Australia data. However, either excluding these two years, or considering turnover in the remaining provinces over the full period, the declining trend in turnover is still evident.

**Confidential Restriction on Publication Claimed**

[Confidential to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]

76. Phone turnover has fallen significantly, in particular since 2009, while turnover in the retail channel has declined more gradually since 2012. There has been very significant growth in the digital channel. Turnover through the phone distribution channel has declined from [Confidential to Tabcorp] [REDACTED] of total wagering turnover, in FY 2006 to [Confidential to Tabcorp] [REDACTED] in FY 2015. Turnover from the physical retail channel has stagnated at [Confidential to Tabcorp] [REDACTED] [REDACTED], and on-course turnover (including Premium) has declined from [Confidential to Tabcorp] [REDACTED], over the same

## Confidential Restriction on Publication Claimed

period. By contrast, the digital distribution channel has grown from **[Confidential to Tabcorp]** [REDACTED]<sup>40</sup>.

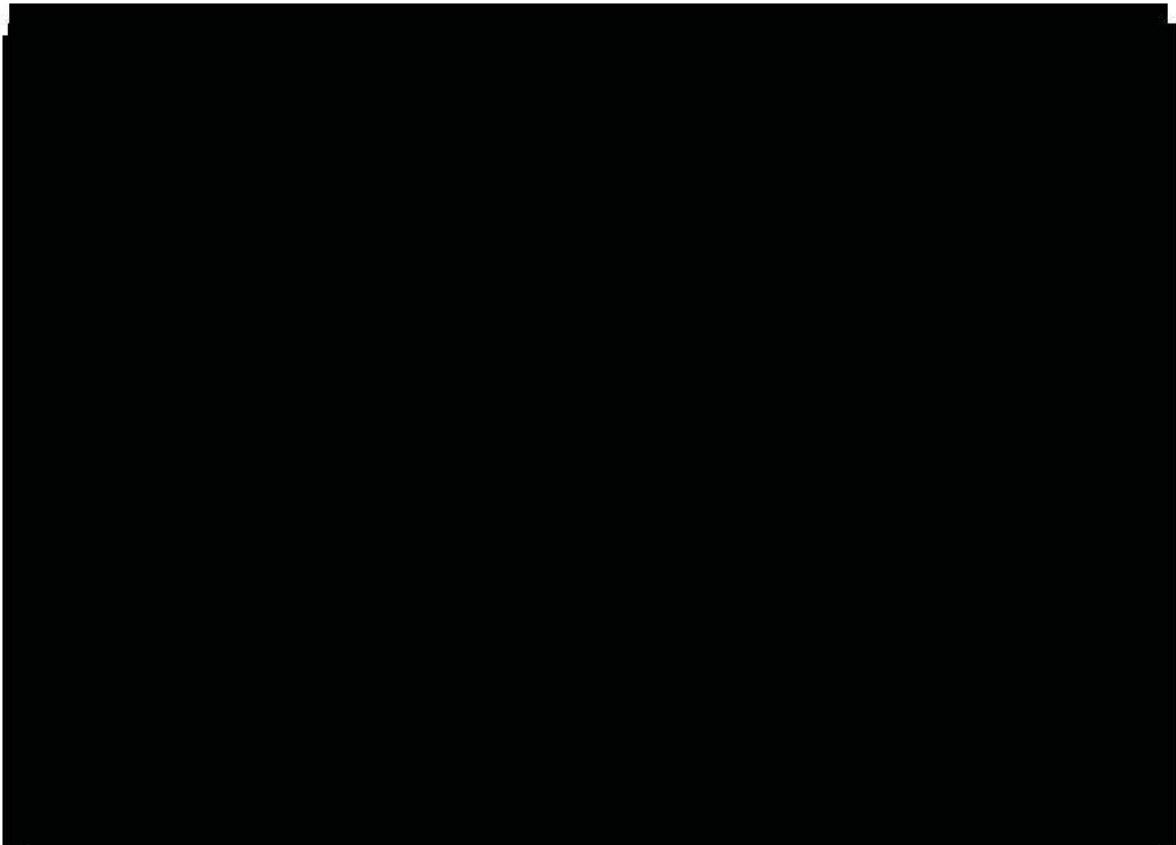
77. This trend has also affected the parties' turnovers, although to different extents. Figure 6 shows Tabcorp's wagering turnover, split between retail (offline) and online channels, over the period FY 2007-2016.

---

<sup>40</sup> See Assumptions, paragraph 128 (Tab 1 of PS-2 [TBP.001.027.1974]).

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp]



78. Tabcorp's wagering turnover [HIGHLY Confidential to Tabcorp] in the retail and phone channels, [HIGHLY Confidential to Tabcorp] in the online channel.

79. Figure 7 shows Tatts' wagering turnover, split between retail (offline) and online channels, over the period FY 2012-2016.

## Confidential Restriction on Publication Claimed

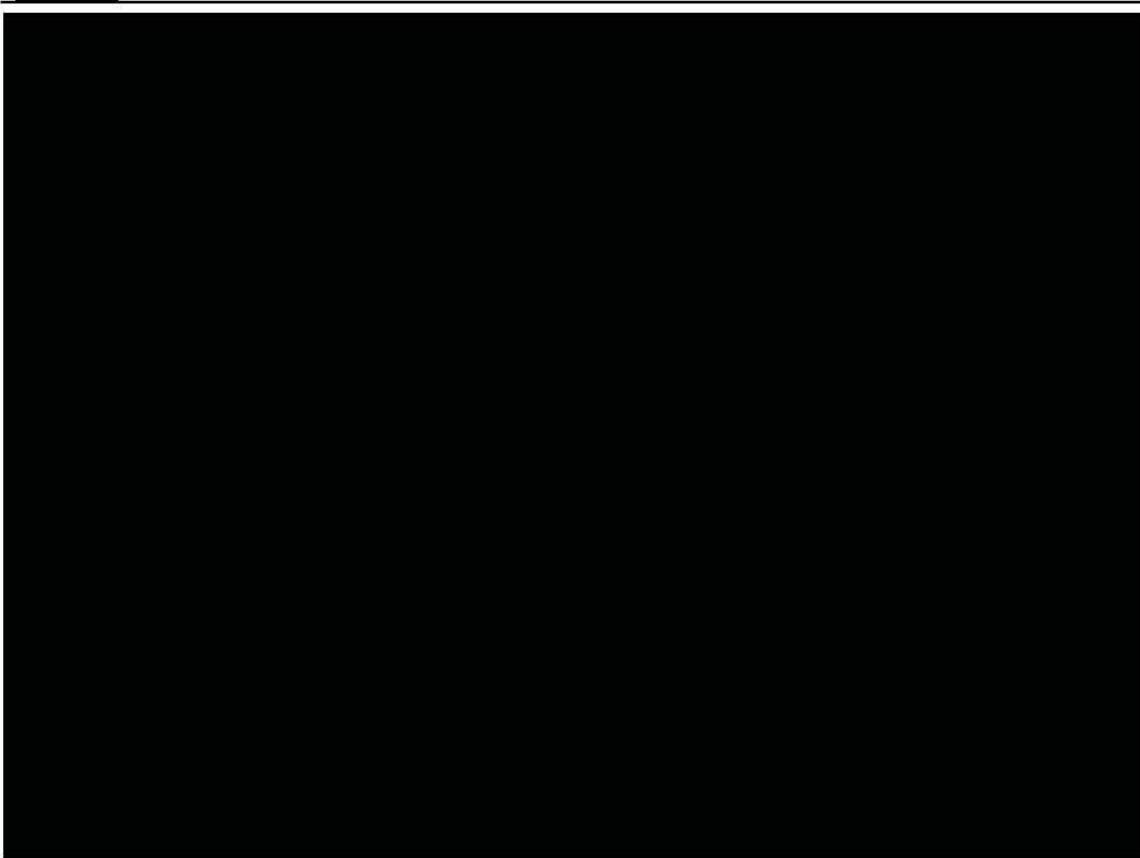
[HIGHLY Confidential to Tatts] [REDACTED]

80. Tatts' wagering turnover has [HIGHLY Confidential to Tatts] [REDACTED] in the retail and phone channels, while [HIGHLY Confidential to Tatts] [REDACTED] in the online channel.

### III.D.vi. Trends – fixed odds and tote wagering

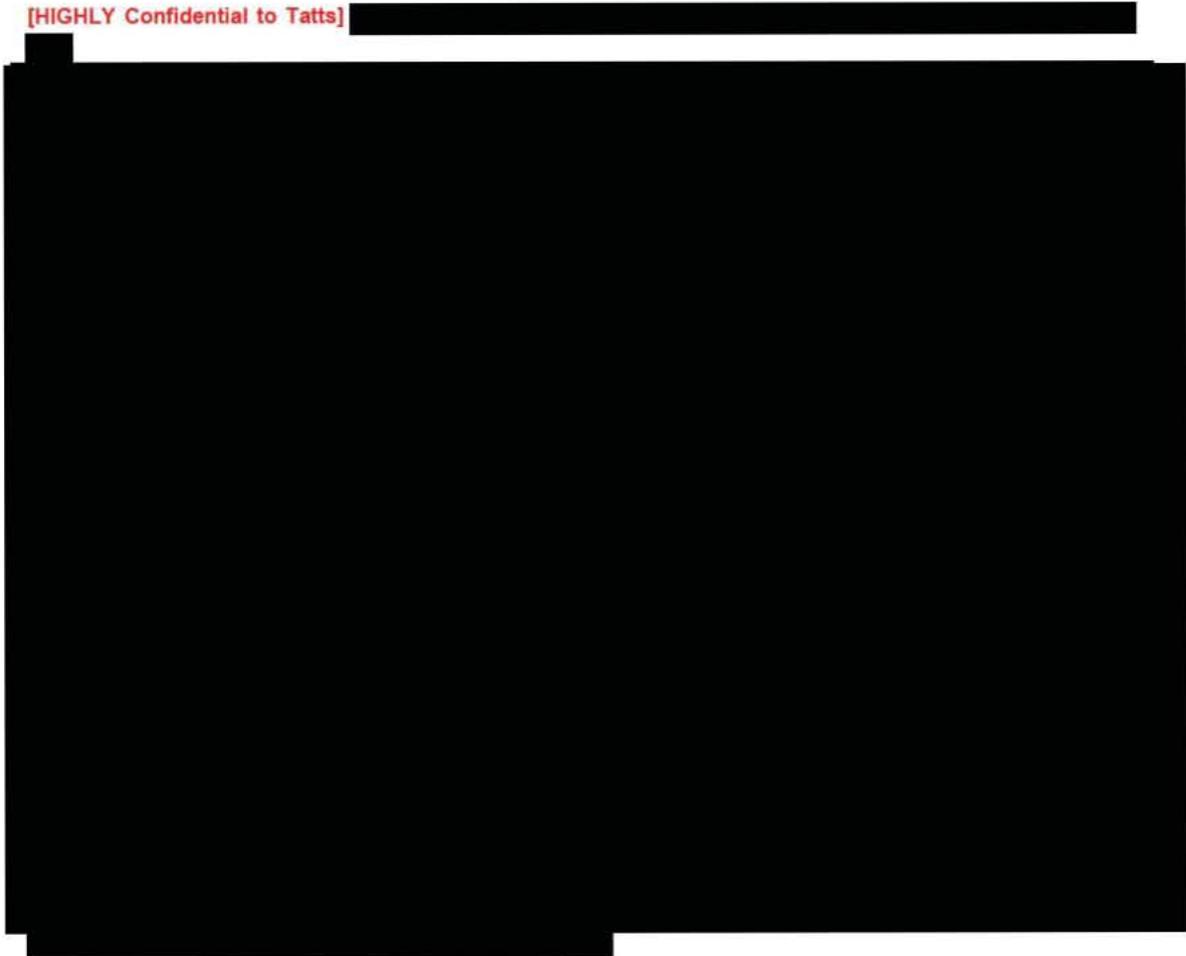
81. Fixed odds turnover has grown, while tote turnover has grown more slowly, or fallen.
82. Figure 8 shows Tabcorp's racing wagering turnover, split between tote and fixed odds, over the period FY 2007-2016.

[HIGHLY Confidential to Tabcorp]



83. Figure 9 shows Tatts' racing wagering turnover, split between tote and fixed odds, over the period FY 2012-2016.

[HIGHLY Confidential to Tatts]



**III.D.vii. Trends – racing and sports betting**

84. Wagering turnover on each of racing and sports events has grown rapidly over the period 2012 to 2015. While wagering on sports has grown more in relative terms (*i.e.* as a percentage of total wagering), wagering on racing still accounts for the majority of turnover, and the absolute increase in racing turnover has been larger than the absolute increase in sports turnover.
  
85. Figure 10 shows the breakdown of online and phone wagering turnover between racing and sport over the period FY 2012 to FY 2015.<sup>41</sup>

---

<sup>41</sup> [Confidential to Tabcorp – external counsel only]

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

[REDACTED]

86. Over the period FY 2012-2015, online and phone wagering turnover on racing [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **III.E. Assessment of the scope for competition**

87. In this section, I consider the scope for competitive interaction between different types of wagering services offered by the parties and third party rivals. In particular, I consider competitive interactions between:

87.1. different totes;

87.2. fixed odds and tote bets; and

87.3. wagering on racing and wagering on other opportunities, in particular sports.

#### **III.E.i. Different totes**

88. In this section, I consider the available evidence on competitive interaction between the different tote pools that operate in Australia. As noted above, the scope for competition between these totes is limited to remote (online and phone) channels. I consider two potential drivers of competitive interaction between different totes – average payout rates (which are affected by take-out rates), and pool sizes (which are affected by co-mingling).

89. There are three tote pools in Australia. Tabcorp operates the SuperTAB totalisator pool, which co-mingles bets from the Victorian and ACT totalisator pools with bets from the Western Australia totalisator pool operated by RWWA and various overseas totalisator pools.<sup>42</sup> The New South Wales tote pool is also operated by Tabcorp; it is not co-mingled with any other pools in Australia, although it is co-mingled with international pools.<sup>43</sup> The Queensland, South Australia, Tasmania and the Northern Territory tote pools are all co-mingled and operated by Tatts under the UBET brand.<sup>44</sup>

90. In this section, I primarily focus on evidence regarding competitive interaction between the two tote pools operated by Tabcorp, the New South Wales and the Victoria

---

<sup>42</sup> See Assumptions, paragraph 101(b) (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>43</sup> See Assumptions, paragraph 101(c) (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>44</sup> See Assumptions, paragraph 114 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

(SuperTAB) tote pools. These are the largest two pools in Australia, and I have access to detailed data on daily turnovers in these two pools. In Section III.F, I consider evidence of competitive interaction between the Tatts UBET pool and the Tabcorp pools.

91. I first consider the potential effect of payout rates on punter demand. I would expect punter demand for tote racing wagering to respond to changes in payout rates, for the same betting opportunities. As a general matter, I would expect demand to fall in periods during which payout rates are lower, and to rise when payout rates are higher. However, as discussed above, it may be difficult to discern the effect of average payout rates on punter behaviour, in particular over the short term.<sup>45</sup> Punters may still choose to bet into different types of wagering products over time, depending on the odds offered for the events they are interested in betting on. Moreover, and again as discussed above, a number of other factors might also affect punter demand, and changes in punter demand over time.<sup>46</sup>
92. Maximum tote take out rates differ for different tote bet types, e.g. the maximum take out rate for an Exacta bet is 20% in New South Wales, whereas the maximum take out rate for a Win bet is only 14.5%. However, the maximum take out rates applied by totes operated in each of Victoria and New South Wales, are identical in many cases.<sup>47</sup> Average payout rates are **[HIGHLY Confidential to Tabcorp]** [REDACTED] these two totes. Figure 11 shows the average payout rates achieved by Tabcorp on each of the New South Wales and Victoria totes, across all bet types.

---

<sup>45</sup> See paragraphs 58 and 59.

<sup>46</sup> See paragraphs 60 to 62, and Sections III.D.v, III.D.vi, and III.D.vii.

<sup>47</sup> See Assumptions, paragraphs 63-66 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

## Confidential Restriction on Publication Claimed

[HIGHLY Confidential to Tabcorp]



- [REDACTED]
93. The scale of this figure is highly magnified, so that the difference in average payout rates in the period after 2014, is around [HIGHLY Confidential to Tabcorp] [REDACTED]. Moreover, much of this difference appears to be explained by [HIGHLY Confidential to Tabcorp] [REDACTED] in the composition of bet types placed by punters in each of the Victoria and New South Wales totes. By way of example, punters placing tote bets in the New South Wales tote might demand a [HIGHLY Confidential to Tabcorp] [REDACTED] [REDACTED] bet types that correspond to lower take out rates (e.g. Win bets, at 14.5% maximum take out) relative to punters placing tote bets into the Victoria tote who might demand a [HIGHLY Confidential to Tabcorp] [REDACTED] bet types corresponding to higher take out rates (e.g. Exacta bets, at 20% maximum take out). Figure 12 shows the same average payout rates, corresponding to each of the

**Confidential Restriction on Publication Claimed**

Victoria or New South Wales totes, accounting for changes in the composition of different bet types demanded by punters placing tote bets with each tote pool.

[HIGHLY Confidential to Tabcorp]

[REDACTED]

[REDACTED]

94. Once adjusting the payout of the Victoria pool to mimic the composition of bet types demanded on the New South Wales pool, or vice versa, there is [HIGHLY Confidential to Tabcorp] [REDACTED] the average payout rates experienced on the two different pools. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]. Accordingly, given these [HIGHLY Confidential to Tabcorp] [REDACTED] [REDACTED] in the average payout rates offered across these different totes, I proceed to

## Confidential Restriction on Publication Claimed

consider the potential effect on punter demand (or turnover) within each tote, in response to changes in the payout rates for individual bet types.

95. Identifying the effects of changes in payout rates on punter demand may be complicated by the various confounding factors and trends that appear to have affected tote racing wagering turnover (such as the relative growth of fixed odds wagering, and the growth of sports wagering, as discussed above). The relationship between payout rates and punter demand may also be affected by simultaneity: while I have tried to identify the effect of changes in payout rates on punter demand, there may simultaneously be effects in the opposite direction, i.e. payout rates might be set in anticipation of expected changes in punter demand. In this section I have tried to identify the effects of changes in payout rates on punter demand by considering a number of abrupt changes in payout rates for specific bet types, and considering changes in wagering turnover that coincided with those changes in payout rates, thereby assuming that isolated, and in some cases temporary, changes in payout rates are exogenous to punter demand.

96. **[Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Since there were only a limited number of such changes that were introduced abruptly and resulted in a significant short term change in payout rates, I have considered these changes as exogenous, and have examined whether punter demand was significantly different in the period during which the tote takeout rates were temporarily altered, compared with demand in the surrounding periods.

97. **[Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED] However, there was **[HIGHLY Confidential to Tabcorp]** [REDACTED]

**Confidential Restriction on Publication Claimed**

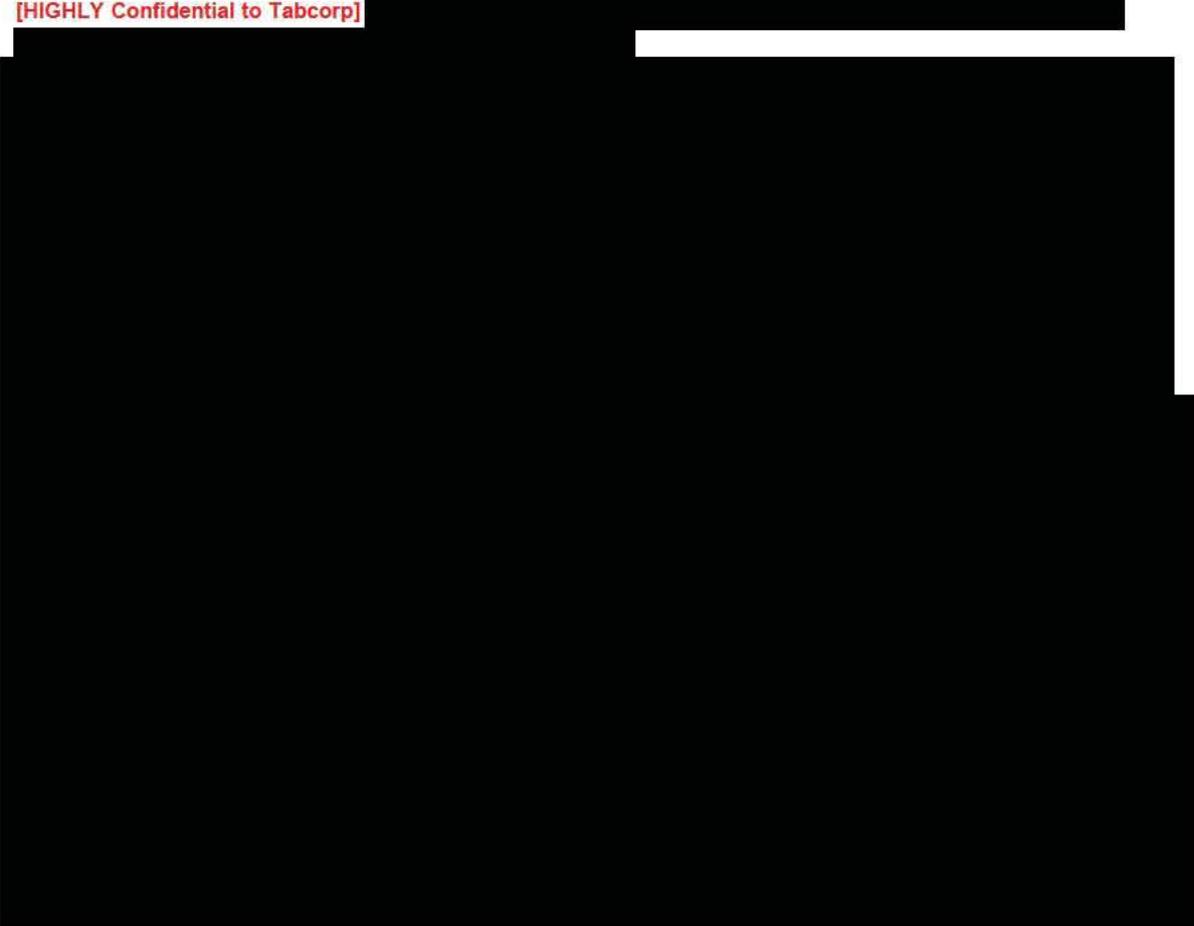
in punter demand (turnover) in either of these tote pools, in response to the **[Confidential to Tabcorp]** [REDACTED] payout rates that were available during this period.

98. **[Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED] However, again, there was **[HIGHLY Confidential to Tabcorp]** [REDACTED] in punter demand (turnover), in either state, in response to the **[Confidential to Tabcorp]** [REDACTED].

99. I have presented a more detailed assessment of these four changes in payout rates in Annex 1. By way of illustration, in regard to the first of these changes, the **[Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED]

## Confidential Restriction on Publication Claimed

[HIGHLY Confidential to Tabcorp]



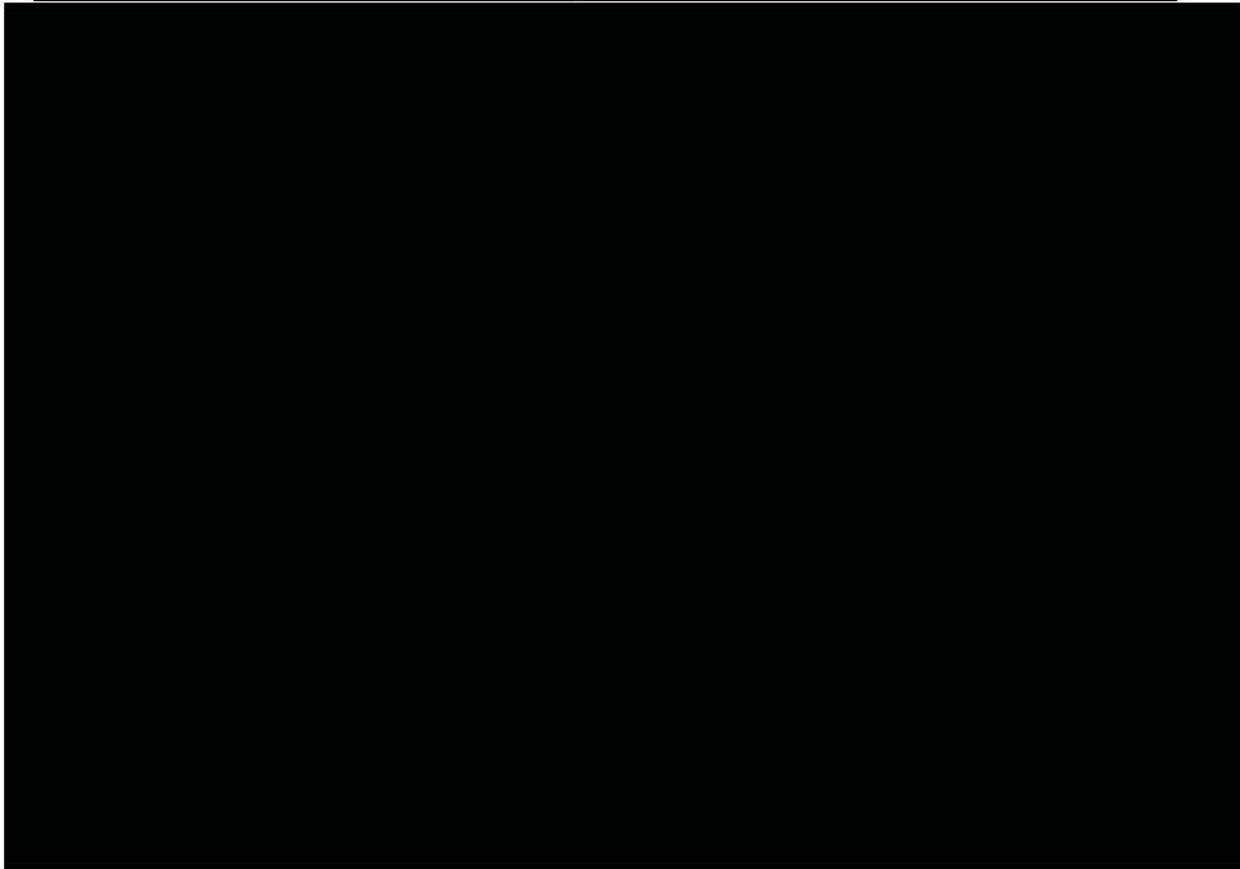
100. I would like to compare turnover on win bets during the period in which [Confidential to Tabcorp] payout rates were available, to the turnovers on win bets during comparable periods in which payout rates were [Confidential to Tabcorp]. However, the turnover shown in Figure 13 appear to exhibit significant seasonality, with fluctuations in similar months each year, and moreover there appears to be a [HIGHLY Confidential to Tabcorp] in the tote turnovers received from one year to the next. One way to accommodate the seasonality, is to compare each month with the same month in other years, i.e. to compare turnover in January 2009, with turnover in January 2008, January 2010 and January each year until January 2015. One way to accommodate the trend over time is to index the turnover in each month to the turnover in the December of each year – in this way it is possible to consider the turnover

**Confidential Restriction on Publication Claimed**

in January 2008 relative to turnover in December 2008, and to compare that to the turnover in January 2009 relative to turnover in December 2009, and thereby to abstract from longer term trends that cause the turnover in December 2009 to be **[HIGHLY Confidential to Tabcorp]** [REDACTED] than turnover in December 2008.

101. Figure 14 illustrates an attempt to accommodate these background effects of seasonality and trends in turnover over time, by showing monthly tote racing turnover on Win bets for races held in Australia in each month relative to the equivalent turnover in December of the same year for the period 2008 to 2015 for the New South Wales tote. The solid line indicates **[Confidential to Tabcorp]** [REDACTED]

**[HIGHLY Confidential to Tabcorp]** [REDACTED]



[REDACTED]

**Confidential Restriction on Publication Claimed**

102. Figure 14 shows that while there is significant variation, turnover was **[HIGHLY Confidential to Tabcorp]** [REDACTED] in periods where Tabcorp offered **[Confidential to Tabcorp]** [REDACTED], were **[HIGHLY Confidential to Tabcorp]** [REDACTED] compared to the same months in other years, relative to December of each year, implying that the changes in payout rates **[HIGHLY Confidential to Tabcorp]** [REDACTED] on turnover, at least in the short term.

103. These results, and the more detailed results presented in Annex 1, are consistent with Tabcorp's experience. In Tabcorp's experience, reducing take-out rates (i.e. increasing the payout rate) results in minimal increases in turnover, and is not profitable.<sup>48</sup>

104. I next consider the potential effect of tote pool sizes on punter demand. I would expect punter demand for tote racing wagering to respond to changes in tote pools sizes. Specifically, I would expect demand to increase in response to an increase in tote pool sizes.

105. **[Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

106. Figure 15 shows the pool sizes for different bet types in each of the New South Wales and Victoria (SuperTAB) pools. These figures show the turnover on Australian racing arising from "local" contributions from the state that hosted the pool, the turnover from

<sup>48</sup> See Assumptions, paragraphs 147 and 148 (Tab 1 of PS-2 [TBP.001.027.1974]).

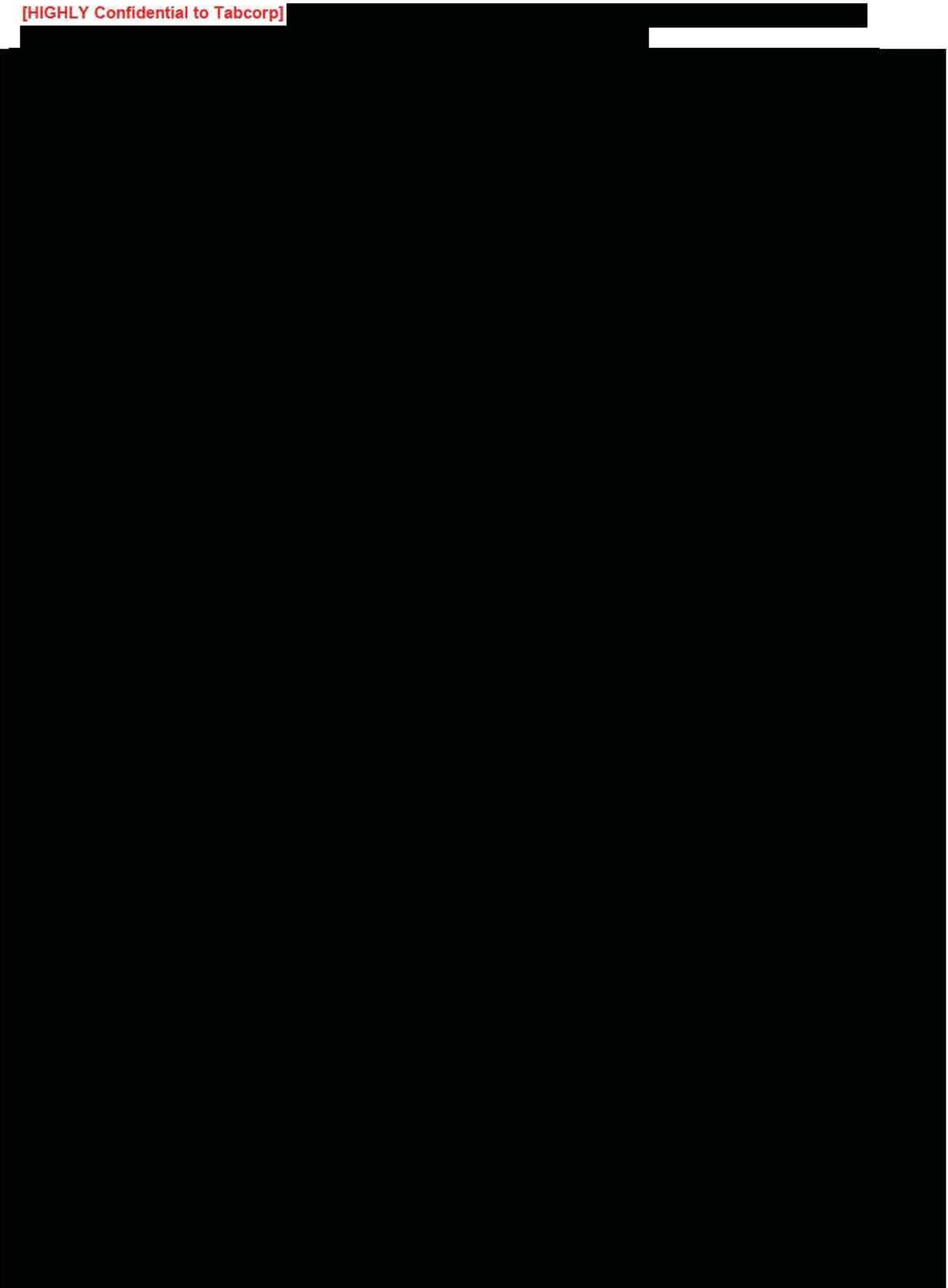
<sup>49</sup> See List of new Tabcorp products, offers and takeout rate changes and applicable time periods (Tab 39 of PS-2 [TBP.015.001.3737]).

## **Confidential Restriction on Publication Claimed**

other Australian states and territories which are co-mingled, and the turnover from international co-mingling (on those same Australian races).

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp]





**Confidential Restriction on Publication Claimed**

[REDACTED]

[REDACTED]

[HIGHLY Confidential to Tabcorp]

[REDACTED]

[REDACTED]

[REDACTED]

109. [HIGHLY Confidential to Tabcorp]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Confidential Restriction on Publication Claimed**

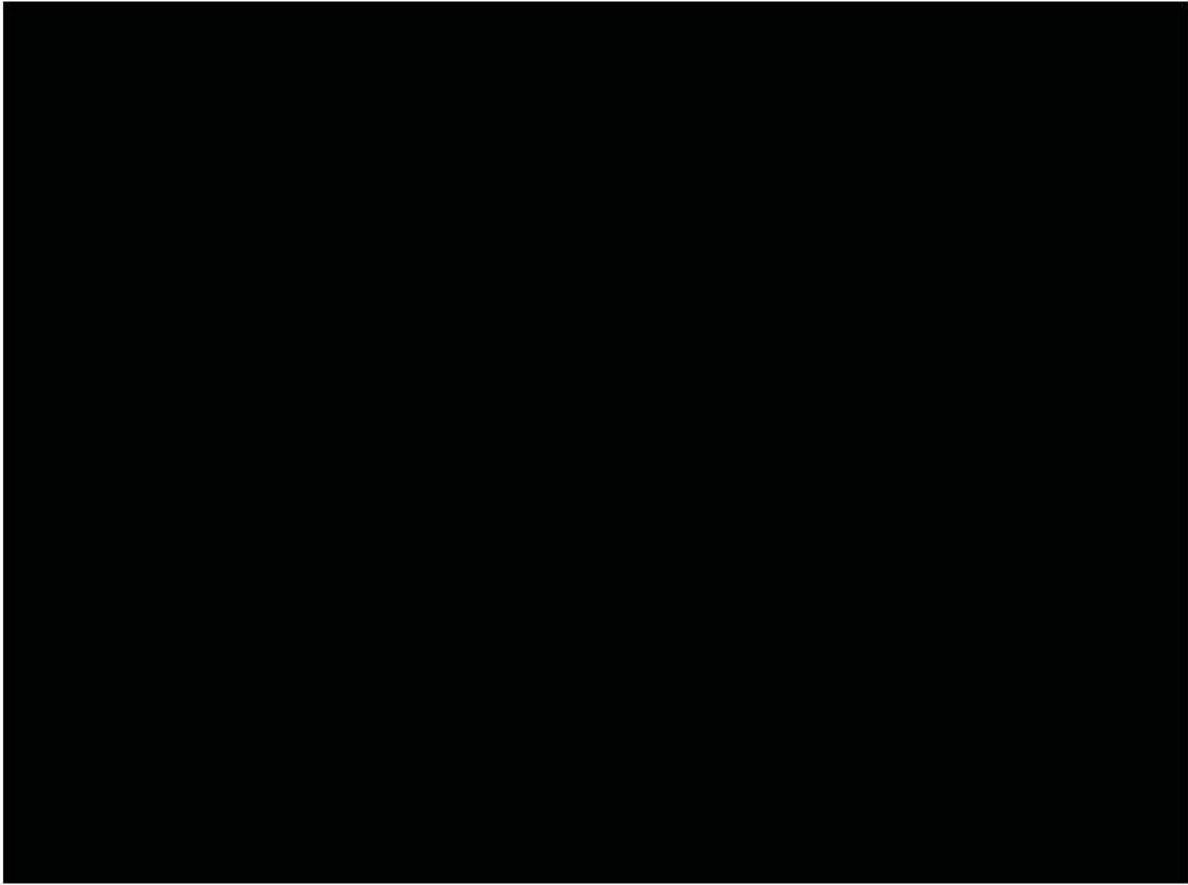
110. There are no restrictions on the ability of a punter in one state to access a tote pool located in another state through the phone or online channel. A punter in Victoria could register an online account with Tabcorp to access the New South Wales pool and, similarly, a punter in New South Wales could register an online account with Tabcorp to access the Victoria pool.

111. The allocation of cross-state wagering turnover between the different Tabcorp pools (i.e. the SuperTAB (Victoria), and New South Wales pools), appears to be responsive to changes in the relative pool sizes between these two Tabcorp pools.

112. **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED] Figure 17 shows the proportions of online and phone (account) tote turnovers arising from punters domiciled in New South Wales that were placed into each of the Tabcorp tote pools, New South Wales or Victoria (SuperTAB), over the period FY 2008 to 2015.

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp]



113. [HIGHLY Confidential to Tabcorp]

[Redacted text block]

52

114. Figure 18 shows a similar analysis for punters domiciled in Victoria, i.e. the proportions of online and phone (account) tote turnovers arising from punters domiciled in Victoria, that were placed into each of the Tabcorp tote pools, New South Wales or Victoria (SuperTAB), over the period FY 2008 to 2015.

---

[HIGHLY Confidential to Tabcorp]

[REDACTED]

[REDACTED]

115. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

116. Finally, Figure 19 shows a similar analysis for punters domiciled in the ACT, i.e. the proportions of online and phone (account) tote turnovers arising from punters domiciled in

**Confidential Restriction on Publication Claimed**

the ACT, that were placed into each of the Tabcorp tote pools, New South Wales or Victoria (SuperTAB), over the period FY 2008 to 2015.

[HIGHLY Confidential to Tabcorp]

[REDACTED]

117. [HIGHLY Confidential to Tabcorp]

[REDACTED]

118. These shifts in tote racing wagering turnover [HIGHLY Confidential to Tabcorp]

[REDACTED]. As noted above, in Figure 12,

## Confidential Restriction on Publication Claimed

average payout rates have been [HIGHLY Confidential to Tabcorp] [REDACTED] for similar bet types, in each of the New South Wales and Victoria totes.

119. While the effective average payouts have been [HIGHLY Confidential to Tabcorp] [REDACTED] in Tabcorp's New South Wales tote pool and its Victoria tote pool, a [HIGHLY Confidential to Tabcorp] [REDACTED] punters domiciled in New South Wales, and the ACT, have chosen to bet into the larger Victoria (SuperTAB) Tabcorp pools over this period, while a [HIGHLY Confidential to Tabcorp] [REDACTED] punters domiciled in Victoria, have chosen to bet into the smaller New South Wales Tabcorp tote pools over this same period. These changes are more likely to have been driven by differences in pool sizes, as there were [HIGHLY Confidential to Tabcorp] [REDACTED] in average payout rates between these tote pools.
120. Based on the evidence available to me, it is difficult to discern a significant impact of changes in average tote payout rates on punter demand. Differences in tote pool sizes do appear to affect relative punter demand for different tote pools, in particular amongst the two Tabcorp tote pools.

### III.E.ii. Fixed odds and tote bets

121. In addition to their tote wagering offerings, each party operates a single fixed odds book, and offers fixed odds bets on racing and sporting events.<sup>53</sup> In the retail and online channels, the parties each offer both tote and fixed odds bet types alongside one another, as shown in Figure 1 above.
122. In this section, I primarily focus on evidence regarding competitive interaction between the tote and fixed odds offerings within each of Tabcorp and Tatts. In Section III.F, I consider evidence of competitive interaction between the Tatts and the Tabcorp fixed odds and tote offerings. In order to focus on one of the channels in which the parties' tote

---

<sup>53</sup> See Assumptions, paragraphs 108 and 115 (Tab 1 of PS-2 [TBP.001.027.1974]).

**Confidential Restriction on Publication Claimed**

and fixed odds wagering services are most likely to interact, i.e. online, as opposed to retail, and in order to try and isolate the analysis from the trends of punter demand shifting between different channels, as discussed in Section III.D.v, above, in this section I present data focussed only on turnovers achieved in the online channel.

123. As noted above, the effects of price competition on punter demand for tote wagering appear to be difficult to detect in the short term. However, over the longer term, differences in payout rates do appear to affect punter demand for different bet types, i.e. fixed odds and tote bets.

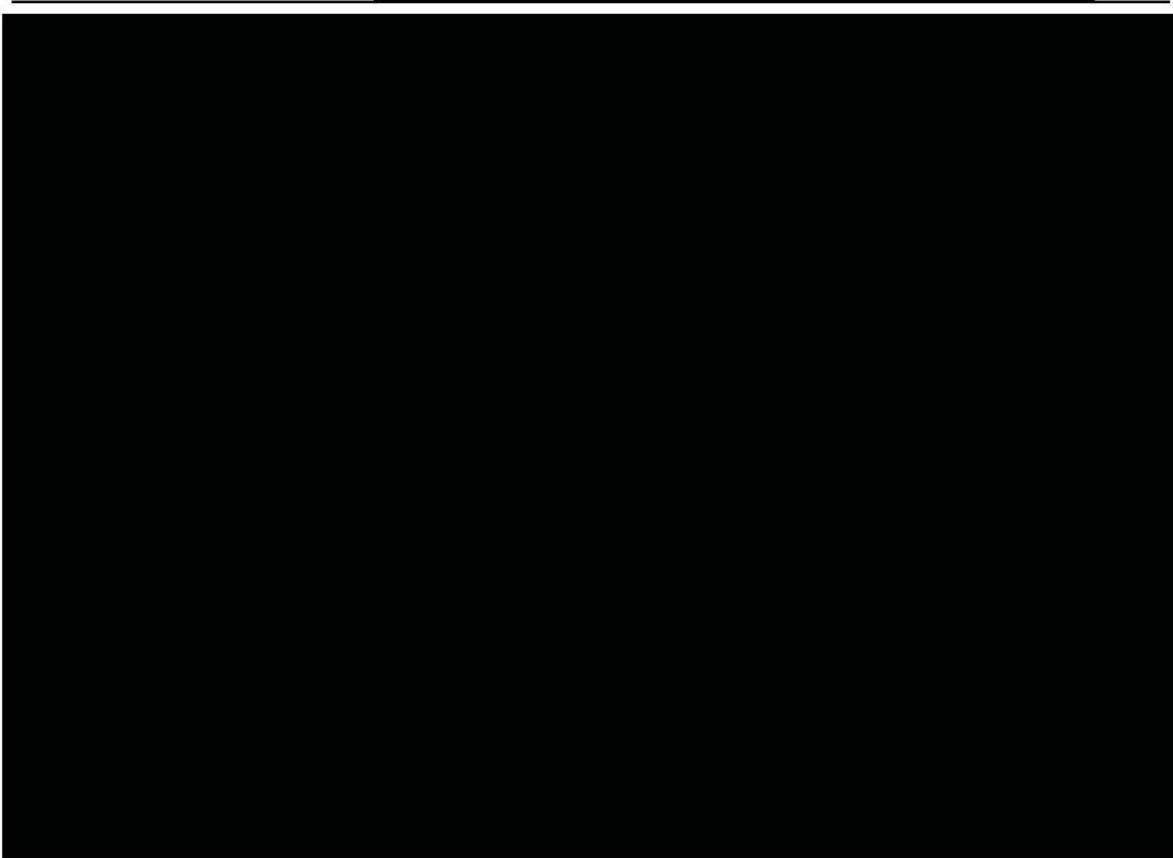
124. Figure 20 below shows Tabcorp's average monthly payout for different racing betting types from 2011 to 2016. **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[HIGHLY Confidential to Tabcorp]



[Redacted text block]

125. Figure 21 shows Tabcorp's online racing wagering turnover, split between tote and fixed odds bets over the period FY 2007-2016.

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

126. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

127. Figure 22 below shows Tatts' average annual payout for different betting types from FY 2012 to 2016. [HIGHLY Confidential to Tatts] [REDACTED]

**Confidential Restriction on Publication Claimed**

[REDACTED]

[HIGHLY Confidential to Tatts]

[REDACTED]

[REDACTED]

128. Figure 23 shows Tatts' online racing wagering turnover, split between tote and fixed odds bets over the period FY 2012 to FY 2016.

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tatts] [REDACTED]

[REDACTED]

[REDACTED]

129. [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

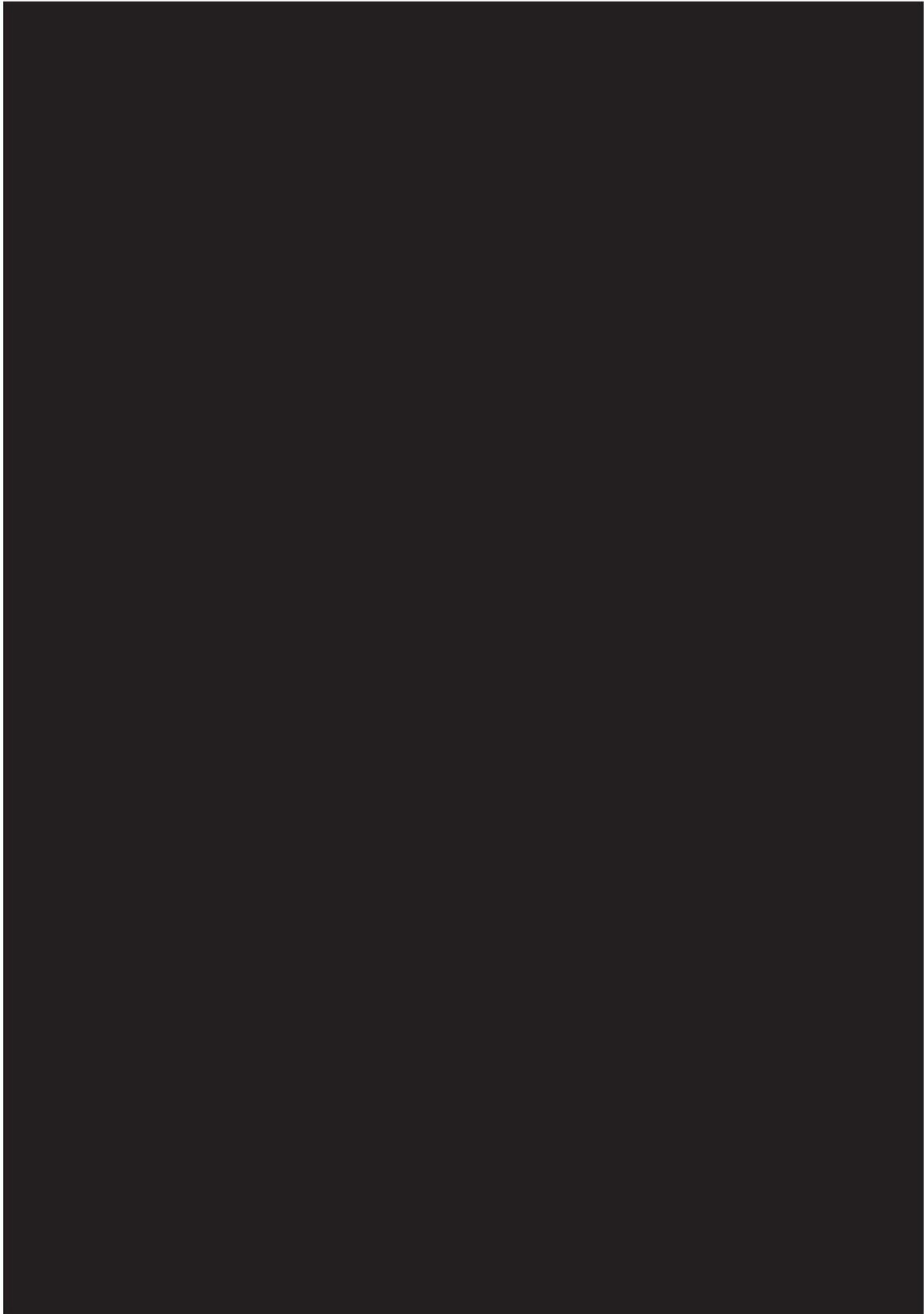
[REDACTED]

[REDACTED]

[REDACTED]

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp and Tatts]



[REDACTED]

130. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

[HIGHLY Confidential to Tatts] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

131. [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED] [HIGHLY

Confidential to Tatts] [REDACTED]

[REDACTED]

[REDACTED] [HIGHLY Confidential to

Tabcorp] [REDACTED]

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

[REDACTED]

132. It is difficult to draw strong conclusions from the comparative performances of aggregated tote and fixed odds turnovers, within each operator, based on comparative changes in average payout rates, within each operator, over an extended period. [HIGHLY

Confidential to Tatts] [REDACTED]

[REDACTED]

[REDACTED].]

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tatts]

[REDACTED]

133. [HIGHLY Confidential to Tatts]

[REDACTED]

134. As discussed above, Tabcorp operates two tote pools, the Victoria (SuperTAB) pool and the New South Wales pool. Even within Tabcorp, the relative attractiveness of these two tote pools (in particular due to differences in their pool sizes) appears to have affected punter demand to place online fixed odds racing wagering bets in each state.

## Confidential Restriction on Publication Claimed

135. The top chart in Figure 26, reproduces Figure 16, above, and shows the contributions (i.e. turnover) from punters who registered to bet into each of the New South Wales and Victoria totes operated by Tabcorp, for online tote racing wagering. The bottom chart in Figure 26, shows corresponding turnover on online fixed odds racing wagering, i.e. turnover from punters who register to bet with Tabcorp in each of New South Wales and Victoria. Again, I compare contributions from punters registered to place bets with Tabcorp in each state in an attempt to control for any trends that might affect punters similarly in each state.<sup>54</sup>

---

<sup>54</sup> It may be too simplistic to state that online fixed odds racing wagering turnover did not increase as expected for punters that chose to register and place bets in Victoria, potentially in response to a change in the pool size of the Victoria tote, if that turnover was likely to have increased in any event (e.g. due to the nature of the trend by which punter demand is shifting in any event, from tote to fixed odds wagering products, as discussed in Section III.D.vi, above). If that trend were to apply similarly to punters that chose to register and place bets in New South Wales, then a comparison of the trends in the two states would isolate any effects that might result from a change in the pool size of the Victoria tote, from any effects that might result from the common trend.

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp]



[REDACTED]

136. **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

136.1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

136.2 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

136.3 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>55</sup>

137. **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]  
[REDACTED]

<sup>55</sup> Source: RBB Economics analysis of TBP.015.001.1839 – TBP.015.001.1843 data.

## Confidential Restriction on Publication Claimed

[REDACTED]

[REDACTED]

[REDACTED]

138. I consider that there is evidence of competitive interaction between online tote and fixed odds racing wagering products, within each party's operations. Over the longer term, differences in average payout rates between online fixed odds and tote racing products are associated with differences in the relative growth rates of each of online fixed odds and online tote racing wagering. Moreover, differences in tote pool sizes, in part due to differences in co-mingling arrangements, are associated with differences in the relative growth rates of online fixed odds and tote racing wagering, within each party's operations. It is difficult to draw strong conclusions from the data and assumptions available to me, given that each of the relevant turnover series have been affected by trends over the relevant time periods (in particular online tote racing and online fixed odds racing wagering turnovers have generally grown over the past five years), and punter demand may have been affected by multiple factors, as discussed above.<sup>56</sup>

### **III.E.iii. Wagering on racing and other wagering on other events**

139. The parties, and the corporate bookmakers, each offer fixed odds betting on racing, as well as other wagering opportunities, in particular other sports.
140. Figure 27 shows the variation over time in Tabcorp's online fixed odds wagering turnover on three of the most popular sports codes, soccer, rugby league and basketball.

---

<sup>56</sup> See paragraph 91.

## Confidential Restriction on Publication Claimed

[HIGHLY Confidential to Tabcorp]

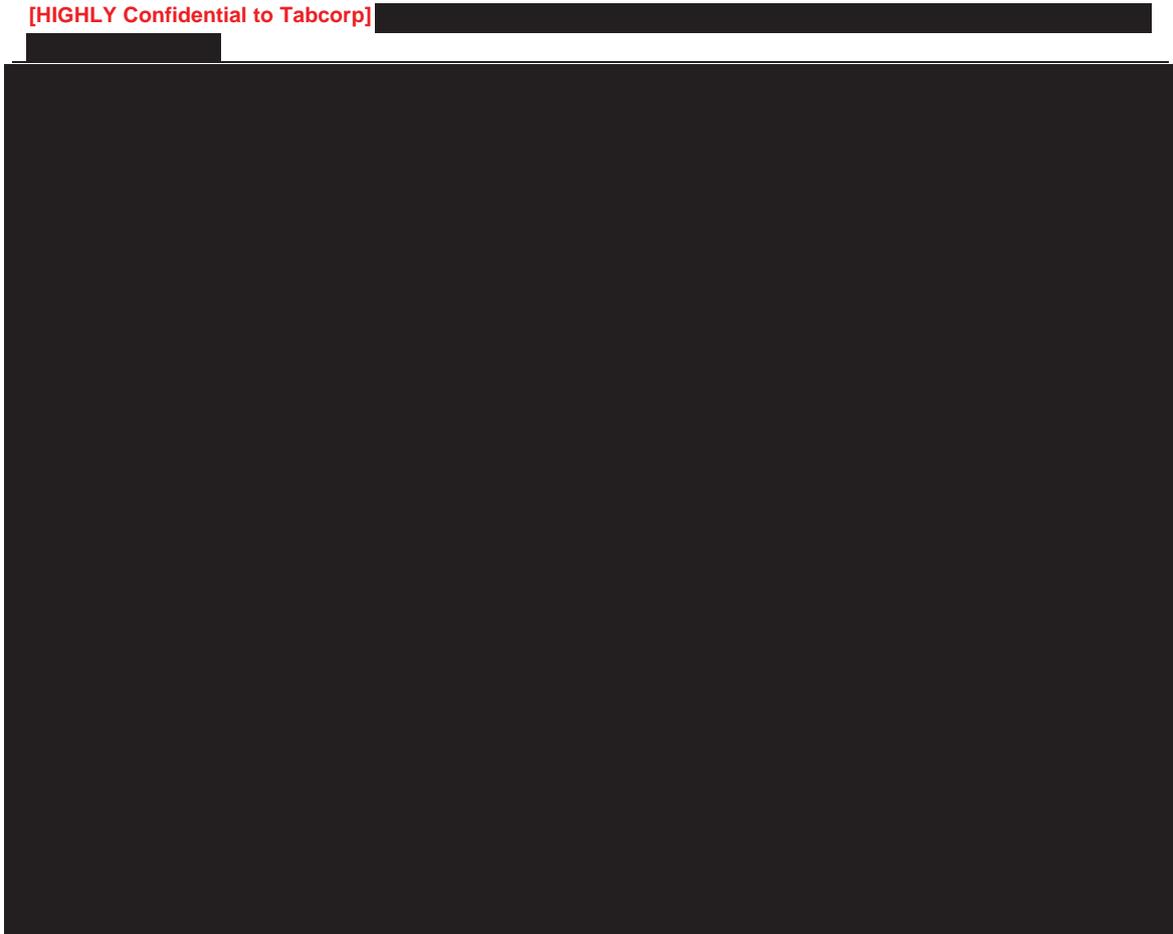


141. **Wagering** turnover on each sport shows significant variation over time, and appears to follow the seasons for the relevant sport. There appear to be peaks in the Southern Hemisphere winter for winter sports (for example, rugby league), and summer for sports played predominantly in the summer (for example, basketball).

142. Figure 28 shows the variation over time in Tabcorp's online fixed odds wagering turnover on racing.

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp]



143. It appears that wagering turnover on racing also shows a seasonal pattern, with a large peak in the Southern Hemisphere spring, and a smaller peak in autumn, with a notable trough in winter. The seasonal patterns of wagering on racing and wagering on all sports are summarised in Figure 29 below.

[HIGHLY Confidential to Tabcorp]



144. Wagering on racing and sports appear to have different seasonal patterns.

145. Potential substitution between wagering on racing and wagering on sports could be explored by considering changes in relative turnovers in response to shocks (exogenous events that might affecting demand for one of either wagering on sports or wagering on racing). As a preliminary comment, online wagering on racing and online wagering on sports have each grown rapidly over the past decade (as shown in Figures 27 and Figures 28 and as discussed in Section III.D.vii), and these trends may make it more difficult to detect significant competitive interactions between these two offerings, in the

## Confidential Restriction on Publication Claimed

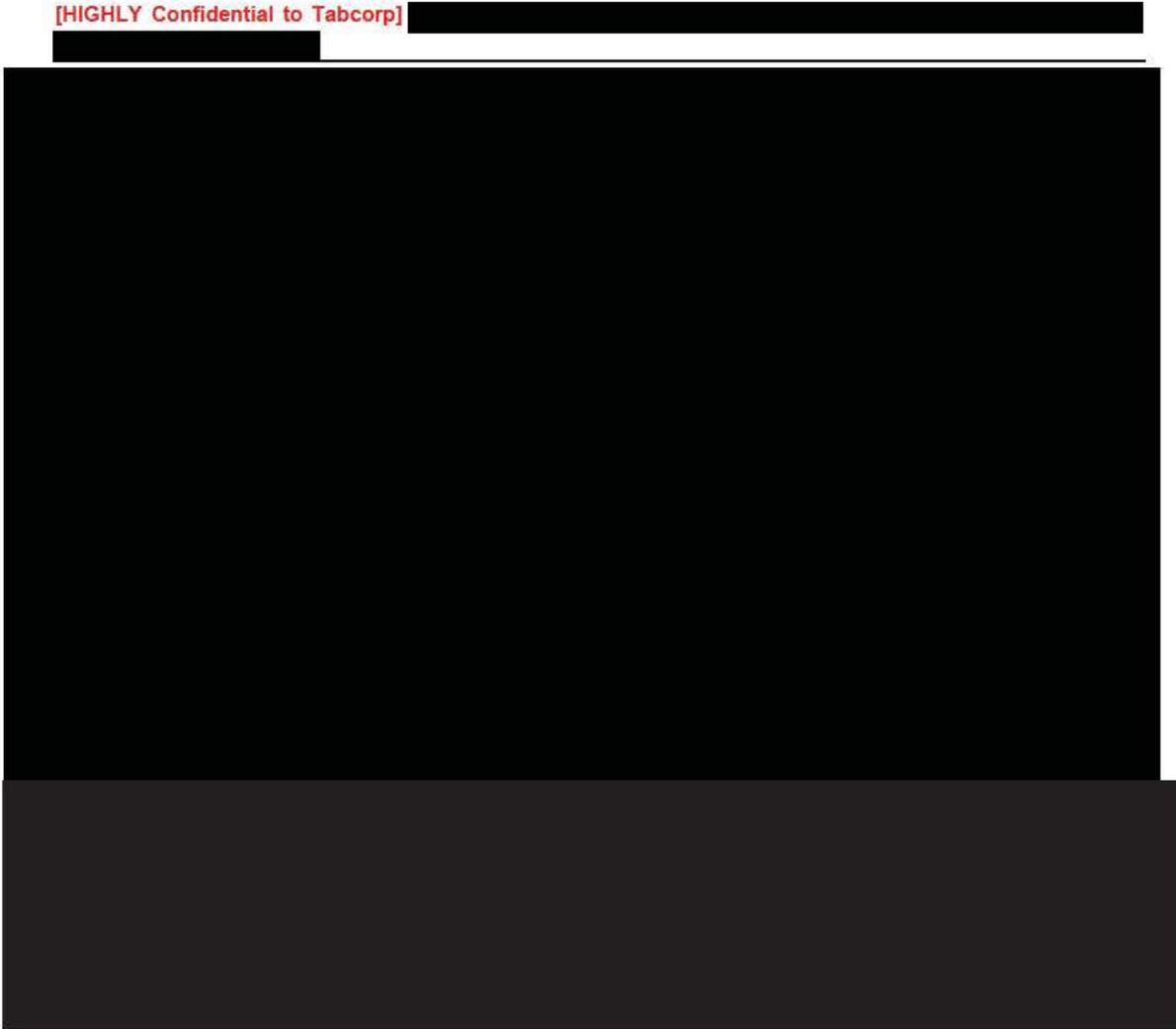
data available to me. Moreover, it may be difficult to identify suitable shocks, or events, that are both likely to prompt substitution between wagering on racing and wagering on sports, and are also likely to be exogenous. By way of example, an event such as a one off American football exhibition game, held in Sydney, might well be exogenous, and unanticipated by punters who would normally place bets on racing; however such an event may also be so unexpected, or such a niche interest, as to be unlikely to prompt material or observable substitution between wagering on racing and wagering on sports. By contrast, wagering on a regular season AFL game may be viewed by some punters as a substitute for wagering on racing, although as the AFL season is known in advance, punters may already have pre-allocated budgets to wagering on AFL games, and wagering on racing, such that it may be difficult to detect substitution in the available data. Additionally, identifying substitution may be further complicated by the different seasonal patterns displayed by racing and sports wagering as shown in Figure 29; an increase in wagering turnover on sports and a decrease in wagering turnover on racing may simply be caused by the different seasonal patterns for each wagering opportunity, as opposed to punter substitution.

146. Sports tournaments that occur only every four years may form suitable events for this type of analysis. Specifically, sports tournaments that cause a steep but short-lived peak in demand for sports betting may also be exogenous in their effects on racing wagering turnover. If there were meaningful substitution between wagering on these sports tournaments and wagering on racing, then the largest sports tournaments may be suitable events for such an analysis.
147. Soccer is one of the most popular sports for betting in Australia, **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED]  
[REDACTED] The FIFA World Cup only takes place once every four years, in June and July, so betting turnover on the event is likely to be more concentrated compared to a more regularly occurring sports tournament, such as a regular season AFL game.

**Confidential Restriction on Publication Claimed**

148. Figure 30 shows Tabcorp's monthly online fixed odds wagering turnover on sports and racing from FY 2006 to FY 2016, and the vertical red lines indicate June in the FIFA World Cup years (2006, 2010 and 2014).

[HIGHLY Confidential to Tabcorp]



149. Figure 30 [HIGHLY Confidential to Tabcorp]



150. Figure 31 [HIGHLY Confidential to Tabcorp]



**Confidential Restriction on Publication Claimed**

[REDACTED]

[REDACTED]

[REDACTED] The solid lines for 2010 and 2014 indicate the years in which the FIFA World Cup was held, while the dashed lines show the surrounding years.

[HIGHLY Confidential to Tabcorp] [REDACTED]  
[REDACTED]



151. Figure 31 [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Confidential Restriction on Publication Claimed

152. Any effect of sports wagering on racing wagering may be understated due to seasonal effects. Racing wagering demand is typically relatively low in June compared to the end of the calendar year, meaning that substitution away from racing wagering may appear weaker at that time of year. Moreover, even for periodic tournaments, such as the FIFA World Cup, punters may have anticipated the wagering opportunities that would exist during the tournament, and may have spread any reduction in racing wagering turnovers over a period longer than the tournament itself, making it additionally difficult to detect any effect.
153. As noted above, trends of shifting demand from tote to fixed odds wagering, and from retail to online channels may also make it more difficult to detect any potential switching between online fixed odds racing wagering and online fixed odds sports wagering.
154. While there was a [HIGHLY Confidential to Tabcorp] ██████████ in racing wagering turnover during the FIFA World Cup in 2010 and 2014, based on the data available to me I have not been able to conclude as to whether or not there is any significant competitive interaction between racing wagering and sports wagering. In particular there appear to be multiple potentially confounding factors.

### III.F. Competition between the parties

#### III.F.i. Limited scope for competition – tote racing wagering

155. As noted above, there are no restrictions on the ability of a punter in one state to access a tote pool located in another state through the phone or digital channel. A punter domiciled in a state in which Tatts is the local retail licensee, such as South Australia, could register an online account with Tabcorp to access the New South Wales pool and, similarly, a punter domiciled in New South Wales could register an online account with Tatts in South Australia, to place tote bets into the South Australia tote, and thereby access the Tatts pool. This means that, at least in theory, the SuperTAB (Victoria) and

## Confidential Restriction on Publication Claimed

New South Wales tote pools, as well as Tatts' UBET pool, could all compete against one another to attract online punters.

156. However, as an empirical matter, even within channels where punters are able to bet outside their state of domicile (primarily online and phone, via accounts), the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters choose to place tote bets into their "home tote", i.e. the tote operated by the party licensed to provide tote bets in the retail channel in the state in which those punters are domiciled.
157. Figure 32 shows the online and phone (account) tote racing wagering turnover originating from punters domiciled in each state, according to the tote pools into which those punters have registered and chosen to place their tote bets.

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



## Confidential Restriction on Publication Claimed

- [REDACTED]
158. The [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters have chosen to bet into their home tote pools, despite [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] and co-mingling arrangements applied in each of the three totes. [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED] punters has chosen to bet into either their home tote pools, or another tote pool operated by the same company (for example, a Victoria-domiciled punter betting into Tabcorp's New South Wales pool).
159. In states and territories where Tatts is the local retail licensee, a [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] proportion of punters choose to bet in out of state tote pools, in particular betting in to the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]
160. Figure 33 shows the proportion of online and phone (account) tote racing turnover placed by punters domiciled in each state, according to whether punters chose to place those bets in the tote operated by the local retail tote licensee, or a tote operator licensed in another state. Accordingly, Figure 33 shows the same data as shown in Figure 32, but normalised, and shown as percentages for turnover placed by punters domiciled in each state.

## Confidential Restriction on Publication Claimed

[HIGHLY Confidential to Tabcorp and Tatts]



161. While [HIGHLY Confidential to Tabcorp and Tatts] of punters domiciled in states and territories where Tabcorp is the local retail licensee have chosen to place online and phone (account) tote bets into the smaller Tatts tote pools, [HIGHLY Confidential to Tabcorp and Tatts] of punters located in states and territories where Tatts is the local retail licensee have chosen to place online and phone (account) tote bets into the larger Tabcorp tote pools.<sup>57</sup>

162. This observation does not appear to have been driven by differences in average payout rates. Based on the information available to me, average payout rates for Tatts' tote

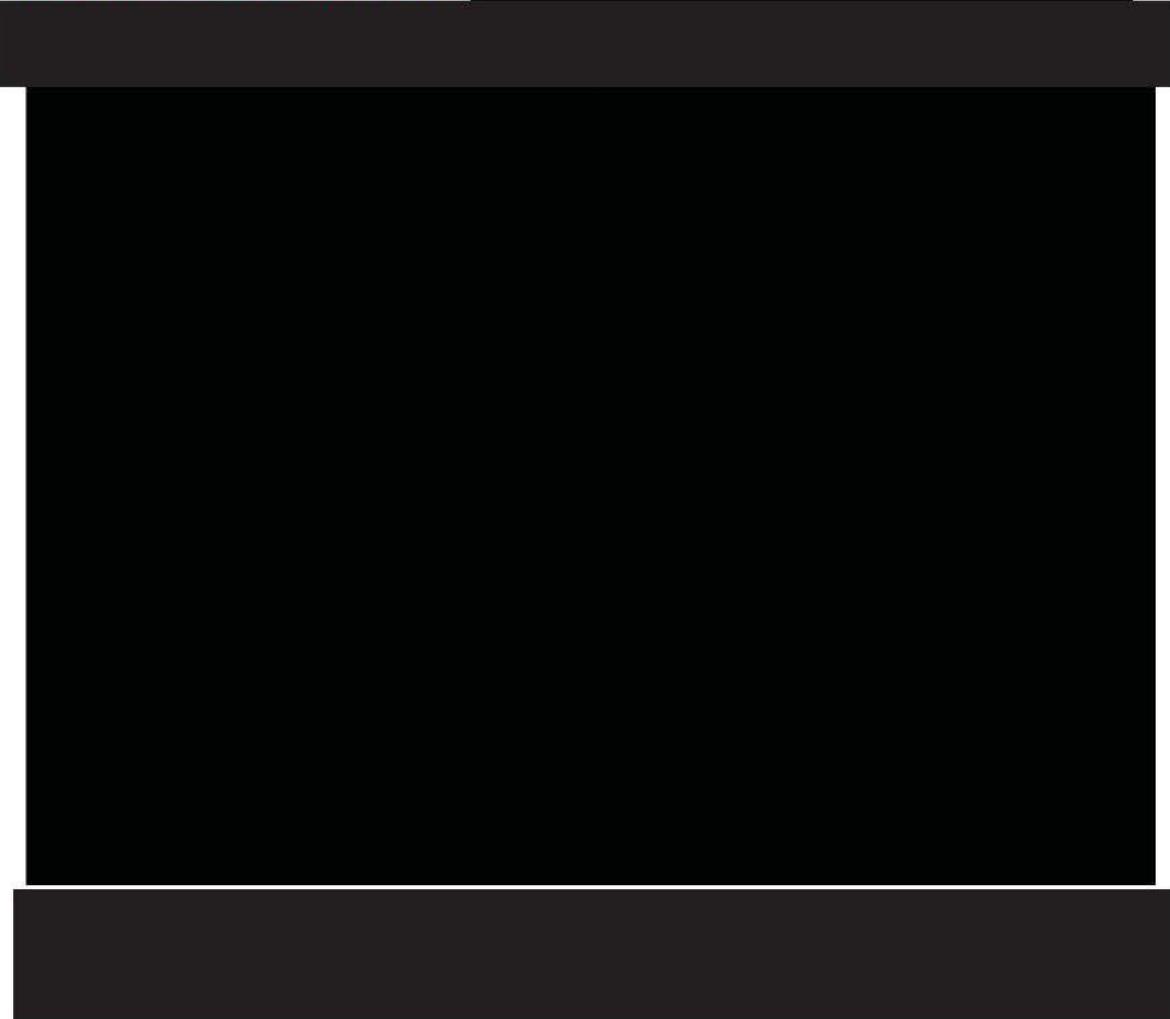
---

<sup>57</sup> See Figure 35.

## Confidential Restriction on Publication Claimed

racing bets were [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] than average payout rates for Tabcorp's tote racing bets throughout this period. Figure 34 shows the payout rates offered by Tatts on tote racing wagering products, compared to the payout rates offered by Tabcorp.

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]



163. The [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED] observed in Figure 34 could be affected by a number of factors. First, as shown in Figure 11 and Figure 12, if punters placing bets in different tote pools demand a different mixture of bet types, then the average payout rate across all bet types might be different, even if the payout rates that correspond to each bet type are identical in the two different tote pools. I do not have access to sufficiently disaggregated data on

## Confidential Restriction on Publication Claimed

Tatts' tote wagering activities to estimate the size of this effect. Second, each of Tabcorp and Tatts offer [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED]<sup>58</sup> I do not have access to sufficiently disaggregated data to analyse whether or not differences in the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] might affect the average payout rates observed in Figure 34, or affect cross-state wagering.

164. Despite average payout rates appearing [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] for Tatts than for Tabcorp, [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED], proportion of punters located in the states and territories where Tatts is the local retail licensee choose to bet into the Tabcorp tote pools. Accordingly, differences in payout rates do not appear to be a significant driver of cross-state wagering.
165. Rather, the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] cross-state betting that are observed appear to be driven by the different tote pool sizes. Figure 35 shows the total annual turnover of each of the tote pools operated in Australia. The turnover for Tabcorp's Victoria (SuperTAB) tote pool is [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED] [REDACTED]

---

<sup>58</sup> See Assumptions, paragraphs 106, 153 (j) and 146(g) (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

166. This [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] practice of punters domiciled in one state betting into the pools of the tote operator that has a retail licence in another state, appears to be [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]. Despite the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] Tabcorp tote pools, there has [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] the proportion of online and phone (account) tote bets placed in Tabcorp pools, by punters domiciled in states and territories where Tatts is the local retail licensee. Figure 36 shows the proportion of tote racing bets placed in the other party's tote pools over time, for each of punters domiciled in states and territories where Tabcorp is the local retail licensee, and punters domiciled in states and territories where Tatts in the local retail licensee.

## Confidential Restriction on Publication Claimed

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

167. Based on the evidence available to me, it is difficult to discern significant competitive interaction between the parties' tote bet offerings. The [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] tote payout rates that are observed between the parties' tote pools do not appear to affect relative punter demand for different tote pools.

168. Differences in tote pool sizes do appear to affect relative punter demand for different tote pools. There appears to be a [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] [REDACTED] punters that choose to bet in the pools of the party that is not their local retail licensee. This proportion of wagering activity does not appear to respond to the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] differences in pool sizes

## Confidential Restriction on Publication Claimed

between the Tabcorp and Tatts pools. Moreover, I am not aware of obvious options available to Tatts that could readily and significantly affect the relative pool sizes of the Tatts pool and the Tabcorp pools.

169. The **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] turnover that indicates punters betting into pools not operated by their home tote pool operator may be significantly explained by large punters. Large punters often bet into all Australian tote pools (and even some international pools) on the same event.<sup>59</sup> As discussed in Section III.D.iv above, I consider that large punters would have the strongest incentives to bet into multiple pools, even for the same betting opportunity, in order to achieve much of the benefits of co-mingling across these different pools. Large punters are likely to be most aware of the benefits of betting into deeper pools, and betting into multiple pools for the same betting opportunity, as large bets will have the greatest negative effect on tote payout rates for the punter concerned, especially within smaller pools. In the case of large punters betting across pools in order to achieve the benefits of co-mingling, these different tote pools would not be competing with one another, but are rather offering the same punter two independent pools in which to place his bets, to allow him to spread the effect of his bets across the different pools.
170. Punters that choose to place bets in the pools of the party that is not their local retail licensee are likely to be better informed regarding their online options for wagering on racing. In the first instance, this **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] [REDACTED] punters that do place tote bets in the pools of the party that is not their local retail licensee already display an awareness of options to place bets with out-of-state operators. In particular for large punters, that have the incentives to place bets into multiple pools, and that often bet into all Australian tote pools (and some international pools), this awareness of alternatives is unlikely to stop at the wagering offerings of the

---

<sup>59</sup> See Assumptions, paragraph 34 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.

### III.F.ii. Limited scope for competition – fixed odds racing wagering

171. As in the case of tote wagering, there are no restrictions on the ability of a punter in one state to access an online fixed odds operator located in another state through the phone or digital channel. A punter domiciled in a state in which Tatts is the local retail licensee, such as South Australia, could register an online account with Tabcorp to access Tabcorp's online fixed odds offerings and, similarly, a punter domiciled in a state in which Tabcorp is the local retail licensee, such as New South Wales, could register an online account with Tatts in South Australia, to access Tatts' fixed odds offerings. This means that, at least in theory, the online and phone fixed odds racing wagering products of each of Tabcorp and Tatts could compete with one another, and with each party's online and phone tote wagering products.
172. However, as in the case of tote wagering, as an empirical matter, even within channels where punters are able to bet outside their state of domicile (primarily online and phone, via accounts), the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters who choose to place fixed odds bets with either party, choose to place those fixed odds bets with the operator licensed to provide fixed odds bets in the off-course retail channel in the state in which those punters are domiciled.
173. Figure 37 shows the proportion of online and phone (account) fixed odds bets placed by punters domiciled in each state, according to whether punters chose to place those bets with the fixed odds operations of the local retail licensee, or the fixed odds operation of the other party.

## Confidential Restriction on Publication Claimed

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

174. Again, despite both parties offering online and phone (account) fixed odds bets to punters throughout Australia, [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters who choose to place online or phone (account) fixed odds racing bets with either party, choose to place online and phone (account) fixed odds racing bets only with the local operator of fixed odds services in the off-line physical retail environment.<sup>60</sup>

175. Considering only the turnover placed with one of the parties (as discussed further below, turnover placed with corporate bookmakers was far larger), in FY 2016, [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of turnover from punters domiciled in states

---

<sup>60</sup> A similar pattern is observed in respect of sports wagering.

## Confidential Restriction on Publication Claimed

and territories where Tabcorp is the local retail licensee was placed in online and phone (account) fixed odds bets with Tatts; [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of turnover from punters domiciled in states and territories where Tatts is the local retail licensee was placed in online and phone (account) fixed odds bets with Tabcorp.<sup>61</sup>

176. This observation does not appear to have been driven by [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] fixed odds payout rates between the parties. Figure 38 shows the payout rates offered by Tatts on fixed odds products, compared to the payout rates offered by Tabcorp. Tatts offered [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates in particular over the period 2013-2015.

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]



---

<sup>61</sup> See Figure 42.

[REDACTED]

177. [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

178. This [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters domiciled in one state betting into the fixed odds operations of the operator that has a retail licence in another state, appears to be [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]. Figure 39 shows the proportion of fixed odds bets placed in the other party's fixed odds operations over time, for each of punters domiciled in states and territories where Tabcorp is the local retail licensee, and punters domiciled in states and territories where Tatts is the local retail licensee. Despite the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates offered by Tatts, there has not been a [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] the proportion of online and phone (account) fixed odds bets placed with Tatts, by punters domiciled in the states and territories where Tabcorp is the local retail licensee.

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

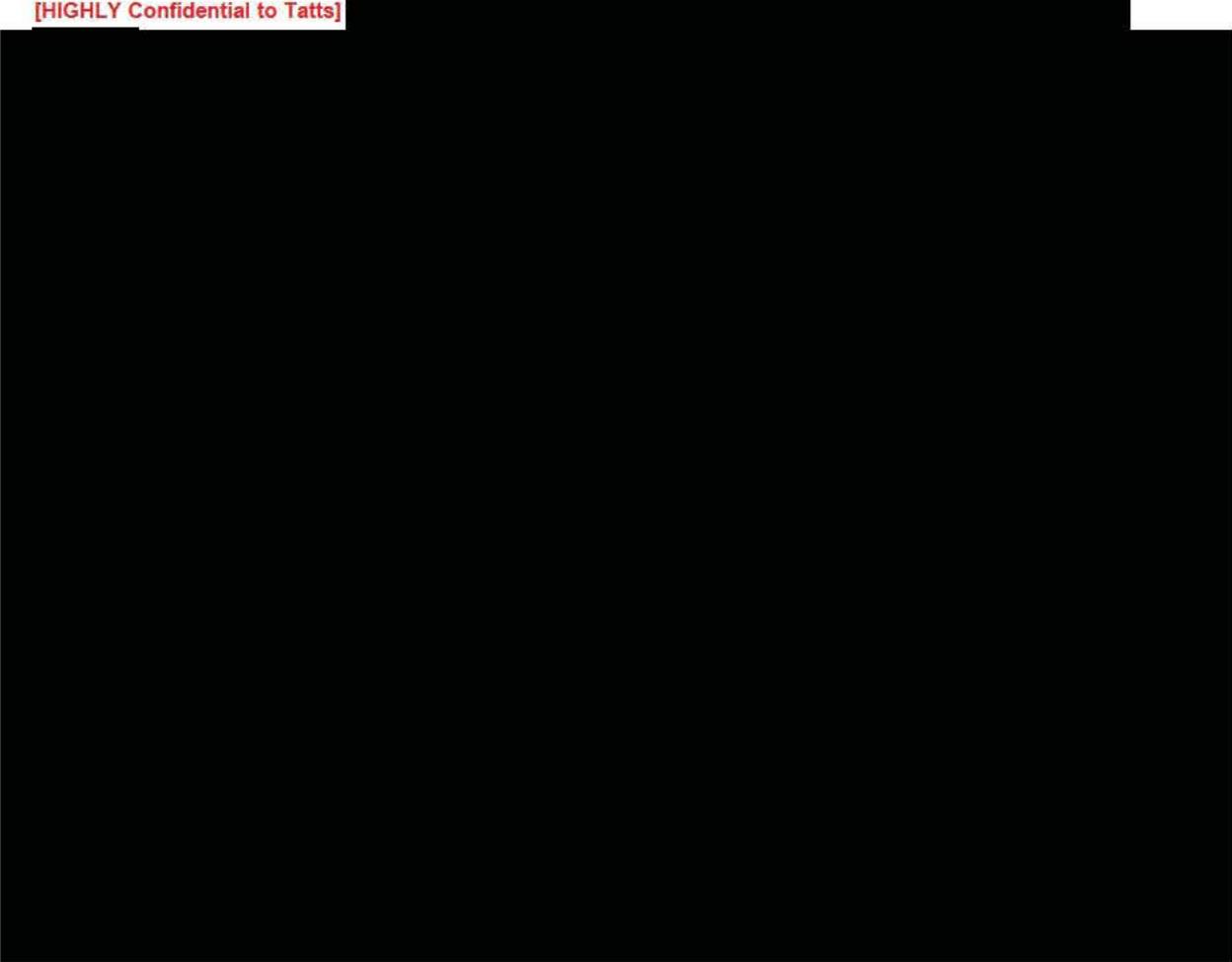
179. There appears to be [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters that choose to bet in the fixed odds operations of the party that is not their local retail licensee, and this proportion of wagering activity does not appear to respond to the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates between the Tabcorp and Tatts fixed odds operations.

180. Based on the evidence available to me, it is difficult to discern a significant competitive interaction between the parties' fixed odds racing wagering offerings. The [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates that are observed [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]



## Confidential Restriction on Publication Claimed

[HIGHLY Confidential to Tatts]



185. Accordingly these “out of state” punters have the strongest incentives to be aware of, and utilise alternative fixed odds operations over time. In particular for larger and more successful punters, this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.
  
186. The same group of punters that might potentially be affected by the merger (because these punters place bets “out of state”, they might consider choosing between the parties’ online fixed odds offerings), are likely to be better informed regarding their online options for wagering on racing, and are therefore less likely to be adversely affected by any putative adverse effects of the merger.

## Confidential Restriction on Publication Claimed

187. In conclusion, it appears that there is limited scope for competition between the parties' wagering services, and that the parties are relatively distant competitors with one another, even in the online and phone channels.

### III.F.iii. Luxbet

188. Luxbet, a wholly owned subsidiary of Tabcorp, is a corporate bookmaker licensed in the Northern Territory, which offers fixed odds betting and tote derivative products on racing, and fixed odds betting on licensed sports and novelty events. Luxbet provides its service online and by telephone.<sup>63</sup> There could be an overlap between the online wagering activities of Luxbet, and the online activities of Tatts.

189. However, I consider that the competitive interaction between Tatts and Luxbet is unlikely to significantly affect the overall competitive assessment.

190. First, Luxbet only accounts for a limited share of corporate bookmaker turnover on a national basis at around [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of online and phone wagering turnover on racing, and around [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of online wagering turnover across all betting opportunities (racing and sports).<sup>64</sup>

191. Second, Tatts also only accounts for a limited share of online and phone wagering activity nationally – [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of online and phone wagering turnover on racing, and [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of total online and phone wagering turnover (on racing and sports).<sup>65</sup>

192. Third, Luxbet and Tatts are unlikely to be particularly close competitors. Luxbet would only be likely to constitute a relevant increment in market share for punters in states and

---

<sup>63</sup> See Assumptions, paragraph 113 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>64</sup> RBB Economics analysis of TBP.001.018.5686, TBP.001.022.0002 and TAT.001.015.0804.

<sup>65</sup> Although, Tatts' share of online wagering turnover in states and territories in which it is the retail licensee is likely to be higher than this. I do not have data on the geographic distribution of the turnover of Luxbet or the other corporate bookmakers. (RBB Economics analysis of TBP.001.018.5686, TBP.001.022.0002 and TAT.001.015.0804.)

## **Confidential Restriction on Publication Claimed**

territories where Tatts is the licensee – given that Tatts has only a limited presence, even online, for punters domiciled in states and territories in which Tabcorp is the licensee. Luxbet is likely to generate the majority of its revenues in the states that account for the largest share of the parties' online racing wagering turnover, New South Wales and Victoria. However these are states in which Tabcorp's online TAB operations already overlap with those of Luxbet, and Tatts' has a very limited online presence. Accordingly, the majority of Luxbet's turnover is likely to be in states in which Tatts has a very limited presence.

193. Fourth, and as discussed further below, the parties each experience higher marginal costs than corporate bookmakers, because of different operating models, higher taxes and higher funding obligations to the racing industry.<sup>66</sup> The different operating models of Tatts and Luxbet are likely to further differentiate their wagering offerings.
194. On the basis of the evidence available to me, I do not think that Luxbet would materially alter the conclusions above.

### **III.G. Competition between the parties and corporate bookmakers**

195. There are currently 17 corporate bookmakers, mostly licensed in the Northern Territory, that provide fixed odds and tote derivative fixed odds products across Australia by telephone or via the internet.<sup>67</sup>
196. As noted above, corporate bookmakers offer fixed odds bets on many of the same underlying betting opportunities (for example, horse races) as those covered by the parties' tote (and fixed odds) products, and also offer tote derivative fixed odds wagering products.

---

<sup>66</sup> See Assumptions, paragraph 121 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>67</sup> See Assumptions, paragraph 119 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

197. Corporate bookmakers quote odds alongside one another for each of fixed odds, and tote derivative fixed odds wagering products, and a number of odds comparison services exist that directly compare odds available across various fixed odds and tote services.
198. Bookmakers choose between using the tote, other bookmakers or a betting exchange to lay off risks that they are exposed to. Bookmakers can mitigate their exposure to bets placed by punters by betting back into a tote pool or by placing similar bets with other bookmakers.<sup>68</sup>
199. Some of the largest corporate bookmakers are owned by multinational bookmakers with access to substantial funding for promotion and expansion, such as Paddy Power (which also acquired Betfair Australia in 2016), Bet365, William Hill, Ladbrokes and Unibet.<sup>69</sup> Some key events include the following.
- 199.1. Paddy Power acquired 51% of Sportsbet in 2009 (the leading corporate bookmaker in Australia), which then acquired a rival corporate bookmaker in Australia, International All Sports (“IAS”).<sup>70</sup> Paddy Power aimed to grow at the expense of TABs: *“The combined brands hold a strong leadership position within the online corporate bookmaking market; however when the online share of the TABs (i.e. the licensed retail monopolies) are included, our share is lower, leaving substantial scope for growth.”*<sup>71</sup> Paddy Power acquired the remaining shares of Sportsbet in March 2011.<sup>72</sup> Sportsbet more than doubled its marketing spend from FY 2013 to 2015 with the highest share of above the line media spend and known

---

<sup>68</sup> See Assumptions, paragraph 42 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>69</sup> See Assumptions, paragraph 120 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>70</sup> See Paddy Power, Annual Report, 2008 (reference in Annex 2), pages 3, 8 and 18.

<sup>71</sup> See Paddy Power, Annual Report, 2008 (reference in Annex 2), page 20. Similarly, the Paddy Power Annual Report for 2010 (reference in Annex 2) states at page 12: *“The Sportsbet brand holds a clear leadership position versus other online corporate bookmakers; however when the online share of the TABs (the licensed retail monopolies) are added, our share is lowered, leaving substantial scope for growth.”*

<sup>72</sup> See Paddy Power, Annual Report, 2011 (reference in Annex 2), page 101.

## Confidential Restriction on Publication Claimed

sponsorship.<sup>73</sup> Sportsbet increased its brand awareness beyond that of Tabcorp's TAB in the second half of 2013.<sup>74</sup>

199.2. William Hill acquired two Australian corporate bookmakers in 2013, Sportingbet (which had acquired Centrebet two years prior) and tomwaterhouse.com.<sup>75</sup> It launched the William Hill brand in Australia in February 2015 and migrated Sportingbet customers in March 2015 and tomwaterhouse.com customers in January 2016 to the William Hill brand. Its prompted brand awareness increased from 32% to 63% between March 2015 and February 2016, and spontaneous awareness rose from 12% to 32% in the same period.<sup>76</sup>

199.3. Ladbrokes entered the Australian market in 2013 through its acquisition of Gaming Investments.<sup>77</sup> It launched the Ladbrokes brand and gained 25% awareness despite having no prior physical presence in Australia.<sup>78</sup>

199.4. Unibet bought Australian corporate bookmaker Betchoice in February 2012 and relaunched it as Unibet Australia by 15 May 2012.<sup>79</sup> In June 2014, Unibet transitioned Australian customers from the Betchoice platform to the Unibet global platform.<sup>80</sup>

199.5. Bet 365 is a privately held UK-based gambling company and obtained its Australian bookmaking licence in February 2011. It offers fixed odds bets on thoroughbred, harness and greyhound racing and on a range of domestic and international sporting events, while also offering live streaming of over 50,000

---

<sup>73</sup> See Assumptions, paragraph 120(a) (**Tab 1 of PS-2 [TBP.001.027.1974]**).

<sup>74</sup> See Paddy Power, Annual Report, 2014 (reference in Annex 2), page 19.

<sup>75</sup> See Assumptions, paragraph 120(c) (**Tab 1 of PS-2 [TBP.001.027.1974]**).

<sup>76</sup> See William Hill, Annual Report 2015 (reference in Annex 2), pages 15 and 32.

<sup>77</sup> See Ladbrokes, Annual Report, 2013 (reference in Annex 2), page 9.

<sup>78</sup> See Ladbrokes, Annual Report, 2013 (reference in Annex 2), page 11.

<sup>79</sup> See Unibet, Annual Report 2012 (reference in Annex 2), pages 8 and 21.

<sup>80</sup> See Unibet, Annual Report (reference in Annex 2), page 21.

## Confidential Restriction on Publication Claimed

events to computers and mobile devices. It now accounts for 13% of online wagering in the Australia.<sup>81</sup>

200. Each of the parties has undertaken various strategic initiatives in order to respond to increased competition from corporate bookmakers.

201. Tabcorp regularly monitors the activity of corporate bookmakers in Australia, including their advertising spend, advertisements, promotional activity, competitive activities, such as new products or sponsorships.<sup>82</sup>

202. Tabcorp has adopted a number of strategic initiatives, designed to strengthen its overall totalisator and fixed odds offering in response to increased competition from corporate bookmakers. These include:

202.1. launching its own corporate bookmaker, Luxbet, in September 2008;

202.2. investing in its infrastructure, retail outlets and digital offerings;

202.3. expanding its local and international co-mingling arrangements, introducing guaranteed minimum pool sizes for certain exotic bet types, and investing in new tote co-mingling solutions;

202.4. introducing new wagering products and bet types; and

202.5. investing in new promotions, loyalty programmes and other marketing activities.

202.6. **[Confidential to Tabcorp]** [REDACTED]

[REDACTED]<sup>83</sup>

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

<sup>81</sup> See Assumptions, paragraph 120(b) (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>82</sup> See Assumptions, paragraphs 145 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>83</sup> See Assumptions, paragraphs 146, and 149 -151 (Tab 1 of PS-2 [TBP.001.027.1974]).

**Confidential Restriction on Publication Claimed**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>84</sup>

204. Tatts has also adopted a number of strategic initiatives, designed to strengthen its overall totalisator and fixed odds offerings to compete with corporate bookmakers. These include:

204.1. investing in its branding, new promotions, affiliate, loyalty programmes and other marketing activities;

204.2. investing in its infrastructure, retail and digital offerings;

204.3. investing in the quality of its fixed odds offering; and

204.4. introducing new wagering products and bet types.<sup>85</sup>

205. Punters tend to experiment by using more than one brand to place their bets in online channels, and this trend is increasing over time as shown in Figure 41 below.

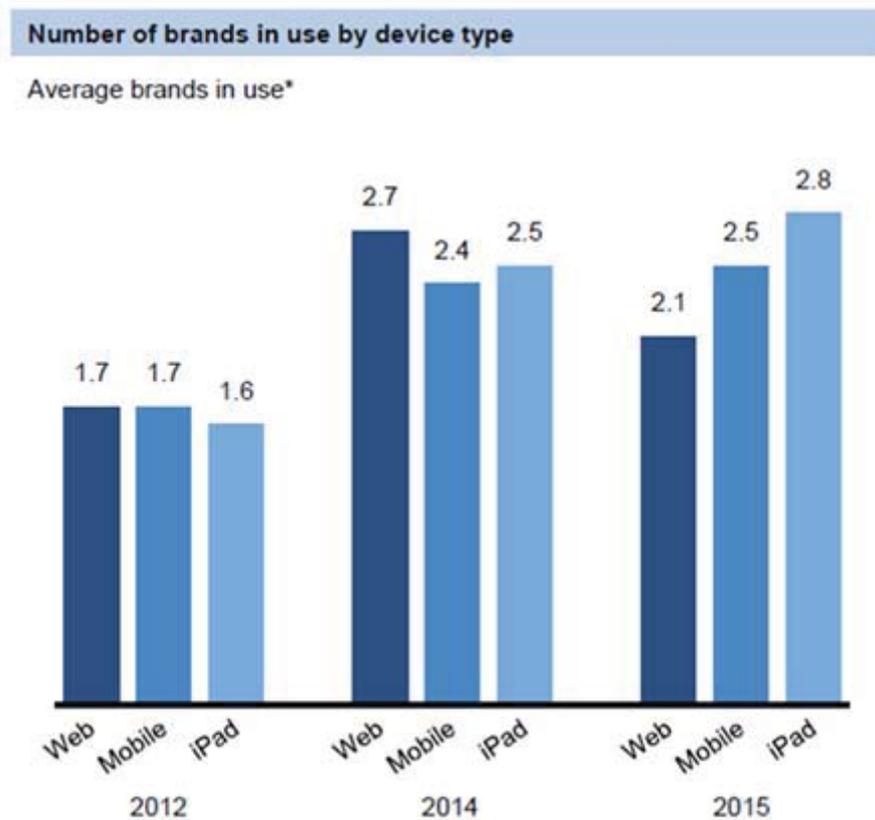
---

<sup>84</sup> See Assumptions, paragraphs 152 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>85</sup> See Assumptions, paragraphs 153 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

Figure 41: Number of brands in use by device type



\* 2013 data unavailable

\*\* Mobile represents the average of iPhone, Android and iPad users

Source: Digital Tracker (The Leading Edge Dec '15)

Source: Assumptions, paragraph 130 (Tabs 1 of PS-2 [TBP.001.027.1974]).

206. In this environment, I would expect wagering operators to compete vigorously for online punters. Corporate bookmakers spend significantly on advertising, promotions, branding and sponsorships.<sup>86</sup> Each of the parties has engaged in various strategic initiatives to compete more effectively with corporate bookmakers.<sup>87</sup>

207. Corporate bookmakers, which solely operate in the online and phone channels, have grown their turnovers on each of racing and sports betting, substantially over the past decade.

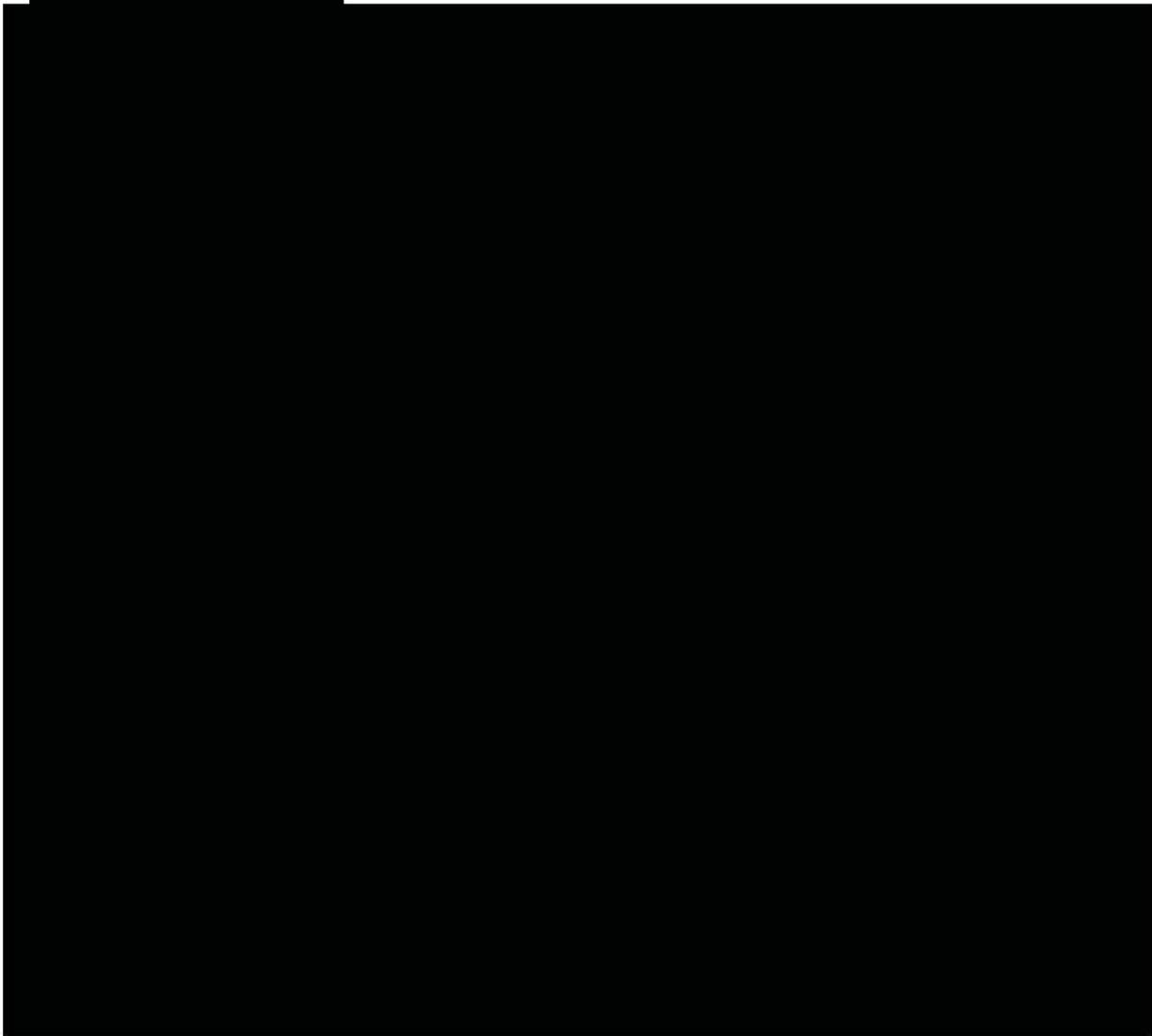
<sup>86</sup> See Assumptions, paragraph 120 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>87</sup> See Assumptions, paragraphs 145-153 (Tab 1 of PS-2 [TBP.001.027.1974]).

**Confidential Restriction on Publication Claimed**

208. Figure 42 shows online and phone racing wagering turnover, split between the parties' tote and fixed odds services, the Western Australian tote offering, and the corporate bookmakers.

[HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]



209. There has been far larger growth in online and phone racing wagering turnover for the corporate bookmakers, than for the parties. Corporate bookmakers have increased their racing wagering turnover from [HIGHLY Confidential to Tabcorp] [REDACTED]

[REDACTED] [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]

[REDACTED]

[REDACTED]

**Confidential Restriction on Publication Claimed**

[REDACTED] [HIGHLY Confidential to Tabcorp]

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

[REDACTED]<sup>88</sup>

210. [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED]  
[REDACTED]  
[REDACTED]

211. I do not have access to data on corporate bookmakers' online and phone wagering turnover at state level. However, as most of the corporate bookmakers are licensed to operate from the Northern Territory, it seems reasonable to consider the distribution of the corporate bookmakers' turnover across states based on the distribution of punters' turnover with other parties in each state. On that basis, the corporate bookmakers are likely to present a far more substantial and closer competitive constraint to each of the parties that is the local retail licensee, than the other party. In particular the corporate bookmakers' online racing wagering turnover is likely to be [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] the increment that would be brought about by the merger, for punters domiciled in each state. In contrast to the parties, which only [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED], and each only achieve [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] online and phone (account) racing wagering turnovers in states in which the other party is the local retail licensee, the corporate bookmakers are likely to achieve a significant share of racing wagering turnovers in each state.

---

<sup>88</sup> RBB Economics analysis of TBP.001.022.0002, TBP.001.018.5686 and TAT.001.015.0804 data. Since TBP.001.022.0002 does not distinguish Luxbet turnover, Luxbet turnover (from TBP.001.018.5686, without removing eliminations) has been subtracted from "Corporate FO" turnover and added to "Tabcorp FO" turnover. "Other Tote" and "Other FO" include RWWA turnover and "Other Bookmakers" turnover. Turnover generated by ACT TAB, which was acquired by Tabcorp in October 2014, is included under Tabcorp from FY 2012 onwards. Turnover generated by Tote Tasmania, which was acquired by Tatts in 2012, is included under Tatts from FY 2012 onwards.

**Confidential Restriction on Publication Claimed**

212. Figure 43 shows the likely distribution of corporate bookmakers' online and phone racing wagering turnover, alongside the online and phone (account) racing wagering turnover generated by each of the parties, in each state. On top of each column, I have calculated the ratio between the turnover of the corporate bookmakers, and the turnover of the party that does not have the local retail license in that state (i.e. the smaller party, or increment, for punters domiciled in that state). As noted above, the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of punters who choose to place even online and phone (account) bets with either of the parties, choose to place those bets with the party that is the local retail licensee in the state in which the punter is domiciled. Corporate bookmakers are likely to achieve racing wagering turnover that is **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED]

[REDACTED]

[REDACTED]

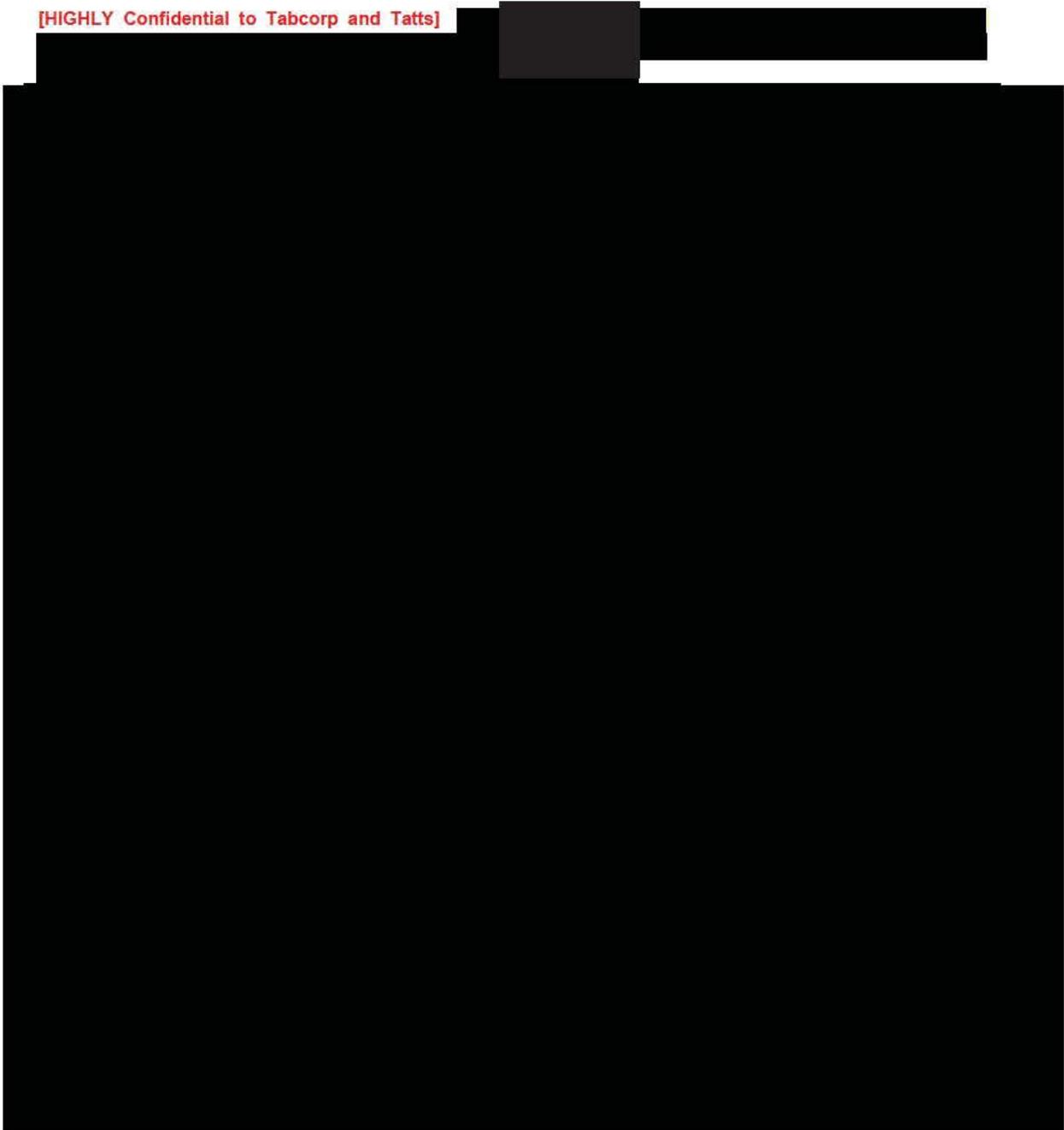
[REDACTED]<sup>89</sup>

---

<sup>89</sup> A similar pattern is observed in respect of sports wagering.

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp and Tatts]



213. This figure shows the relative turnovers of the options considered by punters domiciled in each state, when wagering on racing in the online and phone channels. The punters domiciled in each state choose [HIGHLY Confidential to Tabcorp and Tatts] ■



[REDACTED]

[REDACTED]

214. This [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters that choose to place bets with the party that is not their local retail licensee are more likely to be larger and better informed punters. Punters who choose to place fixed odds bets with the party that is not their local retail licensee [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout rates. Larger and more successful punters have the strongest incentives to be aware of, and utilise multiple alternative wagering operations over time. Large punters often bet into multiple tote wagering opportunities on the same event. These punters already display an awareness of options to place bets with out-of-state operators, and this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. Accordingly, the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters that choose to place bets with the party that is not their local retail licensee are likely to have the best ability to counteract any putative harm that might arise from the merger, through their awareness of the significant number of, and collectively far larger, wagering opportunities offered by the corporate bookmakers.
215. In regard to sports wagering, Figure 44 shows Tabcorp's, Tatts' and others' shares of turnover in the phone and online channel for sports wagering.

216. Corporate bookmakers account for a far larger proportion of online sports wagering, and their share has increased over time. There is a particularly sharp increase in corporate bookmakers' sports wagering turnover from FY 2012 to FY 2013, from around [HIGHLY Confidential to Tabcorp]

217. The parties each experience higher marginal costs than corporate bookmakers, because of higher taxes and higher funding obligations to the racing industry. Moreover, corporate bookmakers do not contribute to the same extent as Tabcorp and Tatts to the provision of racing information services to the public. Corporate bookmakers also enjoy lower

## Confidential Restriction on Publication Claimed

overhead costs because they operate only online, and only provide a single bet type.<sup>90</sup> The comparison is most obvious in the corporate bookmakers' ability to offer tote derivative fixed odds products at better odds than those available through the tote. By way of example, corporate bookmakers will often offer "tote plus 5%", or "best of 3" different tote pools. The customer is therefore guaranteed a better return than that available from the Tabcorp or Tatts totes.<sup>91</sup> Moreover, bookmakers are more freely able to advertise and promote products across all states and territories.<sup>92</sup>

218. In a differentiated product market, a firm with higher marginal costs would be expected to set a higher price.<sup>93</sup> As a result, Tabcorp and Tatts would be expected to set higher prices (that is, lower payout rates or lower quality product offers) than the corporate bookmakers.
219. I have only seen limited data on corporate bookmakers' payout ratios. Figure 45 shows the payout ratios reported by William Hill (2013-2015) and Paddy Power (2010-2015).

---

<sup>90</sup> See Assumptions, paragraph 121 (Tab 1 of PS-2 [TBP.001.027.1974]).

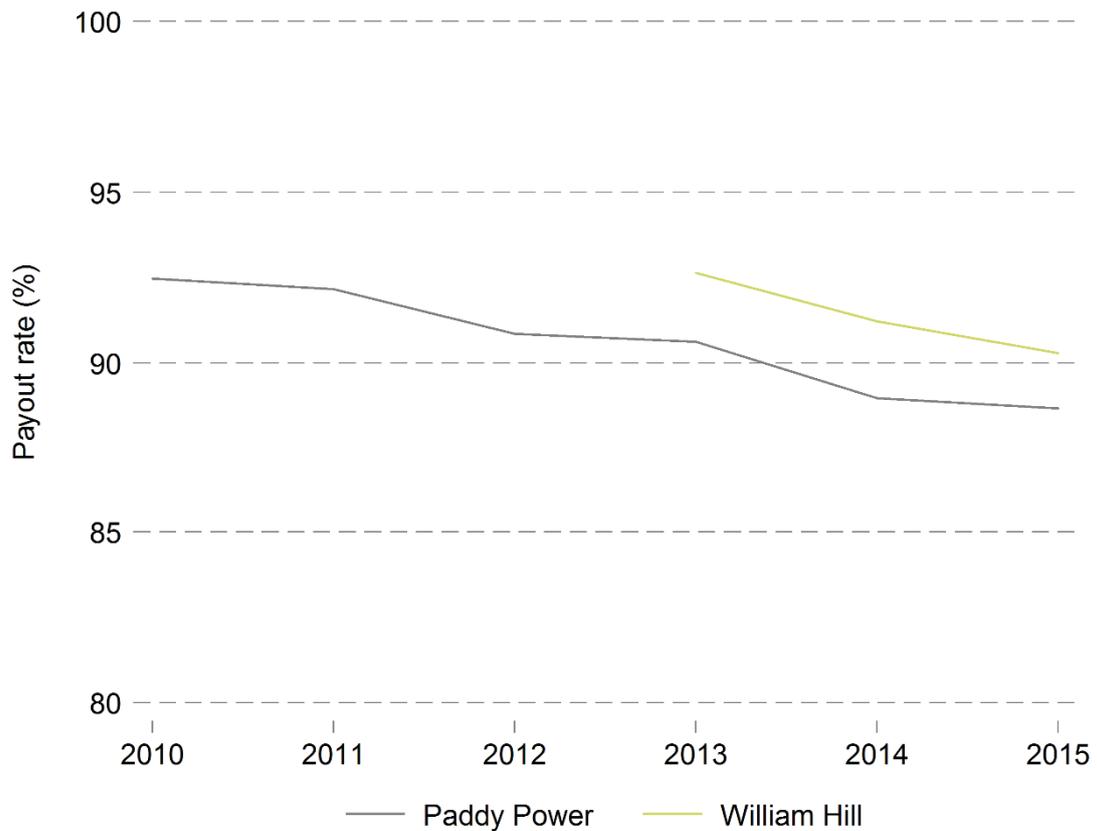
<sup>91</sup> See Assumptions, paragraph 44 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>92</sup> See Assumptions, paragraph 44 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>93</sup> See, for example, Tirole, J., 'The Theory of Industrial Organisation', Massachusetts Institute of Technology (1998), section 7.1.1.1 (pages 279-281) (reference in Annex 2) which shows for a simple model in which firms compete on price and supply differentiated products, that the optimal price set by a firm is higher when its marginal cost is higher.

**Confidential Restriction on Publication Claimed**

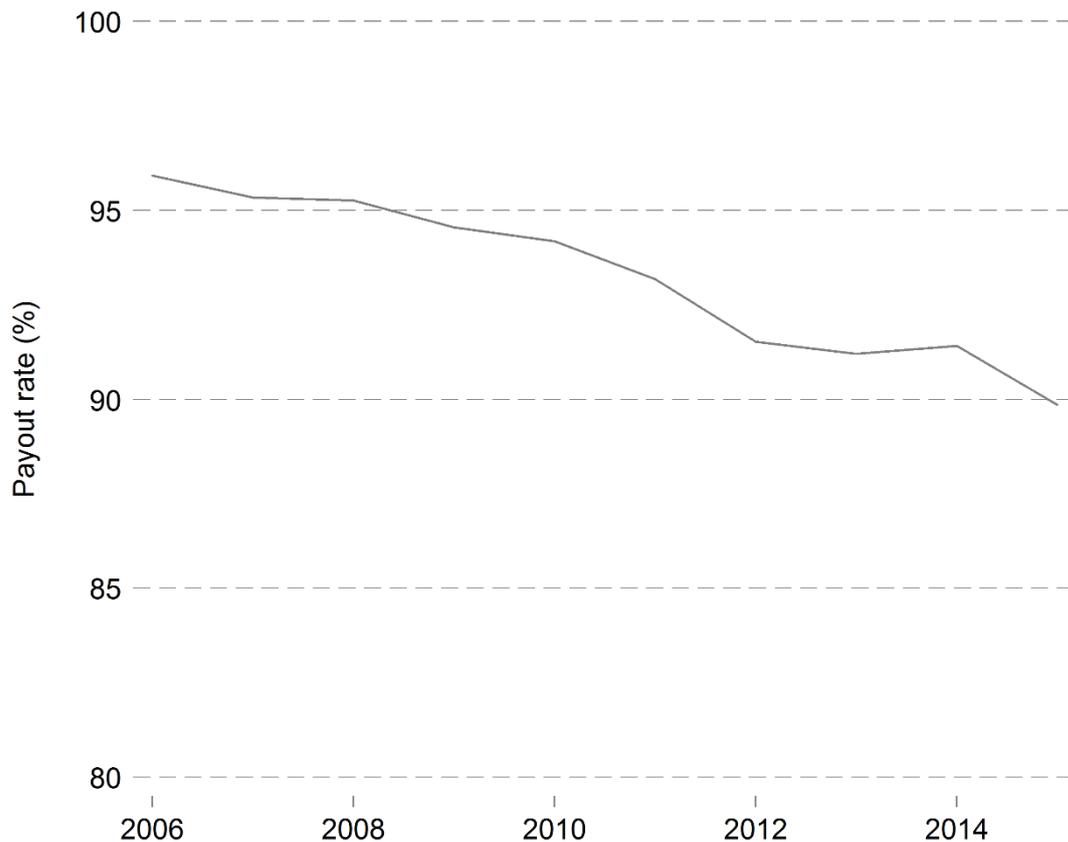
**Figure 45: Australia payout ratios reported by Paddy Power and William Hill, 2010 to 2015.**



Source: RBB Economics analysis of William Hill 2013 Annual Report (reference in Annex 2) (page 93), 2014 Annual Report (reference in Annex 2) (page 97) and 2015 Annual Report (reference in Annex 2) (page 108) and Paddy Power 2011 Annual Report (reference in Annex 2) (page 20), 2013 Annual Report (reference in Annex 2) (page 15) and 2015 Annual Report (reference in Annex 2) (page 16).

220. Figure 46 shows the payout ratios for corporate bookmakers, calculated from data reported in the Australian Gambling Statistics annual product tables.

Figure 46: Corporate bookmakers' average payout ratios, FY 2006 to FY 2015.



Source: RBB Economics analysis of Australian Gambling Statistics data, "On-Course Bookmaker Turnover" (reference in Annex 2) (page 34) and "On-Course Bookmaker Expenditure" (page 38). Notes: The payout ratios are calculated by the expressing the difference in bookmakers' annual turnover and expenditure, as a percentage of bookmakers' annual turnover. Only turnover and expenditure given for the Northern Territories is used as these include data for corporate bookmakers and registered on-course bookmakers, while the rest of the states only show figures for on-course bookmakers.

221. These payout ratios are generally [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] those offered by the parties' tote and fixed odds operations. Given this [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] payout ratios, and the [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] online fixed odds presence of Tatts, in particular, I would expect the corporate bookmakers to continue to exert a significant competitive constraint on the merged entity, post-merger, and likely to continue to win share away from the merged entity, over the longer term, absent any efficiencies arising from this merger.

## Confidential Restriction on Publication Claimed

222. Corporate bookmakers may obtain approval for new wagering products more easily and quickly than the parties, and as a result can offer a broader range of products.<sup>94</sup>
223. While the corporate bookmakers are not a single economic entity, they each benefit from similar advantages, relative to the parties. Moreover, corporate bookmakers have collectively and individually grown their turnover rapidly within a short space of time, and by only operating in the online and phone channels, their marginal costs of expansion are relatively low, compared to the parties, who operate in both remote (online and phone), and physical (on-course and retail) channels. I would expect that the existing corporate bookmakers could each expand to accept higher turnovers relatively quickly. In this environment, it is relevant to consider the number of alternatives available to punters, and not merely the relative size of turnovers of each operator. Punters will retain a significant number of options in their choice of online wagering services.
224. In conclusion, in contrast to the parties' limited overlap with one another, the parties are likely to overlap much more significantly with large and well-resourced corporate bookmakers, who operate with the benefit of substantial advantages over the parties. While the parties each only achieve **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] online and phone racing wagering turnovers in states in which the other party is the local retail licensee, the corporate bookmakers are likely to achieve online racing wagering turnovers that are **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] [REDACTED] than the turnover achieved by the party that is not the local retail licensee, in each state (**[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] [REDACTED] [REDACTED]).
225. Moreover, the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters that choose to place bets with the party that is not their local retail licensee, are more

---

<sup>94</sup> See Assumptions, paragraph 62 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

likely to be larger and better informed punters, have the strongest incentives to be aware of, and to utilise multiple alternative wagering operations over time, and have the best ability to counteract any putative harm that might arise from the merger, through their awareness of the significant number of, and collectively far larger, wagering opportunities offered by the corporate bookmakers.

### III.H. Efficiencies

226. The proposed merger is likely to give rise to a number of efficiencies that may have an impact on competition. In particular, some types of efficiencies would make the merged entity a more effective competitor against the corporate bookmakers. In this section, I consider the likely effects on competition arising from three types of efficiencies: cost synergies, business improvements, and the enhanced potential for offering deeper, co-mingled pools.

#### III.H.i. Cost synergies

227. The merged firm is expected to achieve substantial ongoing annual cost synergies, as well as significant capital expenditure savings. Some of the cost synergies are expected to reduce variable costs (by at least **[Confidential to Tabcorp]** ██████████, realised in full in the third year following completion of the proposed merger).<sup>95</sup> To the extent that the merged firm is able to lower its marginal cost of production, such cost savings are likely to lower the optimal price set by the firm, and so be passed on to consumers in the form of lower prices (or higher payout rates).<sup>96</sup>

228. Significantly greater synergies are likely to result in a reduction in annual fixed costs (with total savings of fixed and variable costs of **[Confidential to Tabcorp]** ██████████, and **[Confidential to Tabcorp]** ██████████ after racing industry payments are

---

<sup>95</sup> See Assumptions, paragraphs 160-165 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>96</sup> See RBB Economics "Cost pass-through: theory, measurement, and potential policy implications" pages 29-30 (reference in Annex 2).

## Confidential Restriction on Publication Claimed

deducted, realised in full in the third year following completion of the proposed merger).<sup>97</sup>

If a merger results in fixed cost savings only, these are typically less likely to affect the firm's pricing decisions (at least in the short-term) and so be passed on to consumers. These fixed cost savings may still be considered a public benefit that could outweigh a potential public detriment.

229. However, in this case, non-price factors of competition, such as promotional expenditure, appear to be important. Potentially, pro-competitive strategic investments, such as promotional expenditure, are likely to be considered, budgeted and planned on an annual basis. The introduction of new products, or investment in improving the quality of wagering services are likely to be considered over the medium term. Accordingly, even annual fixed costs savings may have a positive effect on competition, through their effect on the merged entity's investment in these non-price factors of competition.
230. Moreover, and as discussed in the following section, annual cost savings are likely to affect contributions to the racing industry. Tabcorp will contribute at least **[Confidential to Tabcorp]** to applicable racing industry bodies in accordance with its current agreements to do so.<sup>98</sup>

### III.H.ii. Business improvements

231. A merger can lead to business improvements through implementing best practice across the merged entity. This can be thought of as taking place through the diffusion of know-how through the combined firm.<sup>99</sup> In particular, each entity may have superior knowledge of some business practices and areas, and post-merger the combined firm can implement whichever approach of each kind that is considered superior across the entire firm. In addition to any competitive benefits (in the form of, for example, more products

<sup>97</sup> See Assumptions, paragraphs 160-165 (**Tab 1 of PS-2 [TBP.001.027.1974]**). It is expected that there will be net one-off merger integration costs and capital expenditure of approximately \$80 million.

<sup>98</sup> See Assumptions, paragraphs 160-165 (**Tab 1 of PS-2 [TBP.001.027.1974]**).

<sup>99</sup> See Rölller, Stennek & Verboven "Efficiency Gains from Mergers, in European Merger Control: Do We Need an Efficiency Defense?" in European Merger Control: Do We Need an Efficiency Defense?", Edward Elgar (reference in Annex 2)

**Confidential Restriction on Publication Claimed**

and higher quality products for punters), this may also lead to higher producer surplus in the form of increased profits.

232. The merged firm expects to achieve two main types of business improvements:

232.1.improving Tatts' average fixed odds yield; and

232.2.improving the quality and promotion of the merged entity's wagering services (including through investing in branding and retail outlets, increasing the coverage of new wagering products, and increasing the ability to accept more fixed odds bets through the operation of a larger and more diversified book).<sup>100</sup>

233. The net effect of these types of business improvements will be a significant increase in wagering turnover and revenues. Broadly, the first type of business improvement will reduce wagering turnover, but increase revenues, while the second types will increase wagering turnover (and revenues), by an even greater amount.

234. **[Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] I understand that other fixed odds competitors also operate similar risk management systems.<sup>101</sup>

235. Improving the quality and promotion of the merged entity's wagering services and allowing it to take on more fixed odds bets will result in higher turnover (and correspondingly higher revenues) for the merged entity.<sup>102</sup> These improvements will directly increase competition with corporate bookmakers.<sup>103</sup>

---

<sup>100</sup> See Assumptions, paragraphs 166-181 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>101</sup> See Assumptions, paragraph 109 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>102</sup> See Assumptions, paragraphs 166-181 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>103</sup> See Assumptions, paragraphs 166-181 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

236. Both types of business improvements will increase the profitability of the merged entity, and allow it to invest more in new products and better quality services, making it a more effective competitor, in particular against corporate bookmakers.

### III.H.iii. Tote pools

237. To the extent that the parties currently offer tote betting products that do not compete, or compete only weakly with one another, but that cover the same racing and other betting opportunities, then these two wagering services are more likely to exhibit some degree of complementarity to one another, rather than substitutability.

238. The standard intuition that a horizontal merger of substitutes typically gives rise to some incentive to raise prices, is reversed in the case of complements.

239. Two products are substitutes if an increase in the price of one leads to an increase in demand for the other. A price increase for one brand of cereal might increase demand for another similar brand of cereal. With substitutes like these, the intuition behind unilateral effects analysis in mergers is clear – if a price rise by one brand was not profitable pre-merger, it may well be profitable post-merger, as some of the sales lost by the first brand would then be recaptured by the second. The merged entity is able to consider the recapture of these lost sales post-merger, although neither brand was able to do so independently pre-merger.

240. By contrast, two products would be complements if an increase in the price of the first leads to a decrease in demand for the second. A price increase for left shoes would not only decrease demand for those left shoes, but also for right shoes.<sup>104</sup> In this case a merger may lead to a fall in prices, reversing the logic in the case of substitutes.

---

<sup>104</sup> Similar dynamics are found in a range of situations, including printers and cartridges, and even hospitals in different regions that can combine to provide comprehensive coverage.

## Confidential Restriction on Publication Claimed

241. The independent offerings of two complementary products gives rise to a negative externality between those products. An independent price rise by a left shoe producer has a negative effect on the demand for the products of the right shoe producer. In this case an analogous effect arises from the independent offering of two tote pools on the same races. By offering two independent tote pools, tote operators insulate a given punter betting into one tote pool from the liquidity that exists in the second independent tote pool. This makes both tote pools less attractive to punters.
242. A merger that could lead to further co-mingling between tote pools currently operated independently by each party is likely to result in more attractive pools for punters, that would make tote wagering more competitive against fixed odds wagering, in particular that offered by the corporate bookmakers.
243. The proposed merger brings about the possibility that Tabcorp and Tatts will be able to consolidate (co-mingle) their tote pools. The proposed merger would remove a commercial barrier to merging the totalisator pools, and may make it significantly easier to achieve a merger of pools in light of previous industry and regulatory concerns.<sup>105</sup>
244. If regulatory and racing industry approvals were obtained for pooling across the Tabcorp and Tatts totalisator pools, and the pools were merged, this would create more attractive pools for punters, which would be likely to result in substitution from fixed odds betting to tote betting, and would accordingly generate significant turnover and revenue increases for the merged firm.<sup>106</sup>

### III.I. Conclusion

245. The merger is unlikely to lead to significant harm to competition, and is expected to give rise to several significant efficiencies, which will increase the turnover and revenues of

---

<sup>105</sup> See Assumptions, paragraphs 183-185 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>106</sup> See Assumptions, paragraphs 183-185 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

the merged entity, and enhance its ability to compete effectively with the corporate bookmakers.

246. The two parties offer both tote and fixed-odds wagering opportunities to punters in Australia. Given the geographic restrictions on the parties' on-course and off-course retail operations, the primary scope for competition between the parties is in phone and online channels, where each of the parties' wagering products are offered to punters across Australia. Corporate bookmakers also offer punters fixed odds and tote derivative fixed odds wagering services in the online and phone channels. A number of odds comparison services exist that directly compare odds available across various fixed odds and tote services, for any given racing event.
247. As an empirical matter, even within the online channel, the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters that choose to place tote and fixed odds bets with one of the parties, place these bets with their "home operator", i.e. the party licensed to provide wagering services in the retail channel in the state in which those punters are domiciled.
248. A **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] punters choose to place online and phone racing bets in the tote pools of the party that is not their local retail licensee. This proportion of wagering activity does not appear to respond to the **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] pool sizes between the Tabcorp and Tatts pools. The **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] tote payout rates that are observed between the three tote pools do not appear to affect relative punter demand for different tote pools. Differences in tote pool sizes do appear to affect relative punter demand for different tote pools, although primarily between the two Tabcorp tote pools, the Victoria (SuperTAB), and New South Wales pools, rather than between the Tabcorp and Tatts pools. Moreover, I am not aware of obvious options available to Tatts that could significantly affect the relative pool sizes of the Tatts pool and the Tabcorp pools.

## Confidential Restriction on Publication Claimed

249. The [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters that choose to place online and phone racing bets in the tote pools of the party that is not their local retail licensee may significantly comprise large punters. Large punters are likely to be most aware of the benefits of betting into deeper pools, and betting into multiple pools for the same betting opportunity, as large bets will have the greatest negative effects on tote payout rates for the punter concerned, especially within smaller pools. In the case of large punters betting across pools in order to achieve the benefits of co-mingling, these different tote pools would not be competing with one another, but are rather offering the same punter two independent pools in which to place his bets, to allow him to spread the effect of his bets across the different pools.
250. Punters that choose to place bets in the pools of the party that is not their local retail licensee are more likely to be better informed regarding their online options for wagering on racing. In the first instance, this [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters that do place online and phone tote bets in the pools of the party that is not their local retail licensee already display an awareness of options to place bets with out-of-state operators. In particular for large punters, that have the incentives to place bets into multiple pools, and that often bet into all Australian tote pools (and some international pools), this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.
251. Similarly, a [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] punters choose to place online and phone fixed odds bets with the party that is not their local retail licensee. This [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of punters may significantly comprise larger and more successful punters. Larger and more successful punters will have the greatest incentives to place bets with multiple fixed odds operations over time. There are indications that punters who choose to place fixed odds bets with the party that is not their local retail licensee [HIGHLY Confidential to Tabcorp

## Confidential Restriction on Publication Claimed

and Tatts] [REDACTED] payout rates, and accordingly are likely to be more successful punters, who would have the strongest incentives to be aware of, and utilise, alternative fixed odds operations over time. In particular for larger and more successful punters, this awareness of alternatives is unlikely to stop at the wagering offerings of the two parties. These punters would have the best ability to counteract any putative harm that might arise from the merger.

252. The same group of punters that might potentially be affected by the merger (because these punters place bets “out of state”, they might consider choosing between the parties’ online fixed odds offerings), are likely to be better informed regarding their online options for wagering on racing, and are therefore less likely to be adversely affected by any putative adverse effects of the merger. There is limited scope for competition between the parties’ wagering services, and the parties are relatively distant competitors with one another, even in the online and phone channels.
253. The merged entity will continue to face numerous, large and well-resourced corporate bookmakers, which collectively account for significantly larger turnover than the parties, and have grown faster than the parties over the past few years. Corporate bookmakers operate solely online and via phone, and accordingly have limited incremental costs of expansion.
254. The parties’ each experience higher marginal costs than corporate bookmakers, because of higher taxes and higher funding obligations to the racing industry, and additional contributions to the provision of racing information services to the public. Corporate bookmakers are more freely able to advertise and promote products across all states and territories, and may obtain approval for new wagering products more easily and quickly than the parties. Corporate bookmakers can offer a broader range of products, and can and generally do offer more attractive payout ratios to punters.

## **Confidential Restriction on Publication Claimed**

255. Finally, the merging parties anticipate that the merger will give rise to a number of efficiencies that would make the merged entity a more effective competitor against the corporate bookmakers, lowering marginal costs, and also annual fixed costs.
256. Accordingly, I do not expect the merger to give rise to significant harm to competition, but rather that it is more likely to enhance competition amongst the merged entity and the corporate bookmakers.

#### IV. Funding for the racing industry

257. The racing industry relies on funding from the wagering industry (and in particular from the state-licensed retail wagering operators) and the wagering industry relies on the racing industry to provide races that punters can bet on.<sup>107</sup>
258. In its submission to the Productivity Commission Inquiry into the gambling industry in 2010, the Australia Racing Board estimated that 65% to 70% of thoroughbred racing funding resulted from wagering revenues.<sup>108</sup>
259. Racing represents the vast majority of wagering on the parties' platforms. In FY 2015, racing-related bets represented [HIGHLY Confidential to Tabcorp] [REDACTED] of the total wagering turnover of Tabcorp, and [HIGHLY Confidential to Tabcorp and Tatts] [REDACTED] of the total wagering turnover of Tatts.<sup>109</sup> By contrast, racing bets represent only [Confidential to Tabcorp] [REDACTED] of the total betting turnover of all bookmakers, and this proportion has [Confidential to Tabcorp] [REDACTED]<sup>110</sup>. As a result, the parties have an even stronger incentive than other wagering operators, to ensure and contribute towards the maintenance of high quality racing.
260. Figure 47 shows the turnover generated by Tabcorp from offering wagering on races, and the prize money offered for those races, according to the state in which the racing took place. Each point represents a season from 2006-2007 to 2014-2015.

---

<sup>107</sup> See Assumptions, paragraphs 84-86 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>108</sup> See the Australian Racing Board submission to the Gambling Productivity Commission Inquiry (reference in Annex 2), page 3, which states: "Australian Racing and the Australian wagering market are financially interdependent, interrelated, and structurally linked. Today wagering inflows account for 65 to 70 percent of total Australian thoroughbred racing funding." Similarly, page 25 states: "The thoroughbred racing industry receives funding from different sources including sponsors, media companies, racetrack patrons and racehorse owners. However, while sponsorships, catering, track admissions and other sources of revenue alleviate some of the costs of putting on a racing event, their total contribution is minor (collectively accounting for less than 30 percent of racing funding), when compared to the amount returned to racing from wagering."

<sup>109</sup> Excel Spreadsheets titled "TBP.001.018.5686" (Tab 2 of PS-2 [TBP.001.018.5686]) and TAT.001.015.0804 (Tab 3 of PS-2 [TAT.001.015.0804]). "Total turnover" refers to the total amount wagered on the parties' betting offers by punters without any deductions. Proportions are even higher when considering revenues for the parties.

<sup>110</sup> Excel Spreadsheet titled "TBP.001.018.5686" (Tab 2 of PS-2 [TBP.001.018.5686]).

[HIGHLY Confidential to Tabcorp]



261. The states and territories in which the highest prize money was offered (in significant part funded by contributions from wagering operators), were also the states and territories which gave rise to the highest wagering turnovers.
  
262. The co-dependency of the parties and the racing industry is also evident in the nature of commercial agreements whereby: racing administrators commit to offer a certain number of races in the relevant state; the parties commit to conduct totalisator wagering covering

a certain number of race meetings; and the parties agree to pay fees to the racing industry to ensure appropriate funding.<sup>111</sup>

#### **IV.A. Framework for the analysis**

263. Assessing the likely impact of the proposed merger on funding for the racing industry requires the consideration of two main dynamics.

263.1. The effect of the merger on wagering turnover and revenues generated by the parties, for a given relationship between wagering revenues and funding for racing. Racing funding contributions made by the parties are typically linked to their wagering turnover or revenues, with different rules applying in each state.<sup>112</sup> Higher wagering revenues for the parties thus lead to higher contributions towards funding for the racing industry.

263.2. The effect of the merger on the bargaining dynamic that gives rise to the relationship between wagering revenues and the contributions to the racing industry.

#### **IV.B. Funding arrangements**

264. The funding arrangements agreed between the racing industry in each state and the retail wagering licensees may involve bargaining amongst at least the relevant racing stakeholders, state governments, and the wagering licensees. The outcome of such negotiations can depend on the harm caused to each party by a failure to reach an agreement, or its outside options. A party may agree to an outcome only if it is as good as its best outside option, absent agreement. To the extent that the merger affects the outside options available to the racing industry in each state, then this could affect the

---

<sup>111</sup> See Australian Racing Board submission to the Gambling Productivity Commission Inquiry (reference in Annex 2)

<sup>112</sup> See Assumptions, paragraphs 84-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

funding arrangements that relate wagering turnover of the racing industry and the tote operators.

265. It is unclear, as a matter of theory, whether or not further consolidation amongst wagering licensees is likely to strengthen or weaken the negotiating position of the wagering licensees.

265.1. It may appear that the outside options of the states and territories (and their respective racing associations) would be reduced by the consolidation of two of the current wagering licensees. Such an analysis would depend on the capability and incentives of other potential wagering licensees to compete for any new licences that might come up in future.

265.2. On the other hand, it may also appear that the outside option of the wagering licensees is worsened by the merger, as any failure to agree sufficient funding for the racing association in one state or territory would not only adversely affect the relevant wagering licensee in that state, but would likely also adversely affect the merging party's other wagering operations in other states and territories.

266. As a factual matter, the relationships between wagering revenues and funding for racing are the result of negotiations involving multiple parties, over a long period of time, and are expected to continue for the foreseeable future.<sup>113</sup>

267. I have considered the terms agreed in previous iterations of wagering licenses, in particular comparing the terms agreed between states and territories and the original wagering licensees, and then the terms more recently agreed by the same states and territories, and the current wagering licensees, which have followed a period of significant consolidation amongst wagering licensees. Three state licences have been re-awarded, or extended since their original agreement – those in Victoria, New South Wales, and

---

<sup>113</sup> See, in particular, Assumptions, paragraph 154 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

Queensland. In between these renegotiations or extensions, there has been a significant consolidation amongst wagering licensees.

268. In regard to Tabcorp:

268.1. Tabcorp was formed in 1994 when the Victorian State Government privatised the Victorian TAB through an initial public offering listed on the ASX;

268.2. Tabcorp acquired TAB Limited, the New South Wales TAB business, in 2004; and

268.3. Tabcorp acquired ACTTAB, the previously owned government owned ACT TAB business, in October 2014.

269. In regard to Tatts:

269.1. TABQ was formed in 1999 when the Queensland State Government privatised the Queensland TAB through an initial public offering listed on the ASX;

269.2. TABQ acquired TAB NT when it was privatised in 2000;

269.3. TABQ acquired TAB SA when it was privatised in 2002 and changed its name to UNiTAB;

269.4. Tattersalls Ltd and UNiTAB merged in 2006; and

269.5. Tatts (formerly Tattersalls Ltd) acquired Tote Tasmania in 2012.

270. There is no evidence that these renegotiations, despite significant consolidation amongst wagering operators, resulted in any worsening of the terms for the funding of racing.

270.1. In 1994, the Victorian State Government granted Tabcorp an 18 year exclusive retail wagering licence in Victoria. In 2012, following a competitive bidding process, Tabcorp was awarded the Victorian wagering licence for a further 12 years, with an option on the part of the Victoria Government to extend for a further

## Confidential Restriction on Publication Claimed

two years. It was a requirement of the bidding process that the applicants had to agree to arrangements with the Victorian racing industry (including in relation to funding) that were no less favourable than the existing arrangements that were in place with Tabcorp at that time. Furthermore, I understand that there are some terms in the 2012 agreements that are more favourable to the racing industry than those in the original 1994 agreements, such as that Tabcorp is now required to contribute 50% of Victorian wagering revenues, whereas the 1994 agreements required a contribution of 25% of net profits.<sup>114</sup>

270.2. In 1998 when the New South Wales State Government granted TAB Limited a 99 year wagering licence with retail exclusivity for 15 years. In 2013, the New South Wales State Government negotiated an agreement with Tabcorp to extend the exclusivity period for a further 20 years without a competitive process. I understand that while the core terms in the 2013 agreement remain unchanged, relative to the 1998 agreement, there are some additional terms which require Tabcorp to make contributions in respect of new products and arrangements, such as Trackside, PGI, as well as a sponsorship fee to NSW Racing.<sup>115</sup>

270.3. In 1999 the Queensland State Government granted TABQ a wagering licence and retail exclusivity for 15 years. In 2014, Tatts negotiated an agreement with the Queensland State Government to extend Tatts' Queensland wagering licence by 61 years to 2098, and to extend the retail exclusivity period by 30 years to 2044. I understand that while the core terms in the 2014 agreement remain unchanged, relative to the 1999 agreement, there are some additional terms which require

---

<sup>114</sup> See Productivity Commission, "Gambling", No. 50, 26 February 2010 (reference in Annex 2), Table 16.2; and Assumptions, paragraphs 10 and 84-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>115</sup> See Productivity Commission, "Gambling", No. 50, 26 February 2010 (reference in Annex 2), Table 16.2; and Assumptions, paragraphs 10 and 84-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

**Confidential Restriction on Publication Claimed**

Tatts to make contributions in respect of new products and arrangements, sports wagering revenues.<sup>116</sup>

271. Figure 48 summarises Tabcorp's contributions to the racing industry in absolute terms, and as a proportion of its wagering revenues derived from racing.

**[HIGHLY Confidential to Tabcorp]** [REDACTED]



272. Tabcorp's contributions to the racing industry have increased over time, and these contributions, **[HIGHLY Confidential to Tabcorp]** [REDACTED]

---

<sup>116</sup> See Productivity Commission, "Gambling", No. 50, 26 February 2010 (reference in Annex 2), Table 16.2; and Assumptions, paragraphs 17 and 84-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

**Confidential Restriction on Publication Claimed**

[REDACTED], a period during which there has been significant consolidation amongst wagering licensees.

273. Prize money, or stakes, are one of the primary uses of funding in the racing industry. Prize money attracts and remunerates owners, trainers and jockeys of good quality race horses. Tabcorp's turnover on different racing events is an indication of the quality of those events, in terms of punters' demand for products that relate to these events.

274. Figure 49 shows the changes over time in the ratio of Tabcorp's wagering turnover, on races run in each state, as a multiple of the prize money offered in that state.

**[HIGHLY Confidential to Tabcorp]** [REDACTED]



## Confidential Restriction on Publication Claimed

[REDACTED]

275. The ratio of wagering turnover to prize money is one indication of the value obtained by wagering operators (turnover), relative to the value obtained by racing associations (prize money).

275.1. This ratio is [HIGHLY Confidential to Tabcorp] [REDACTED] in the states where Tabcorp is licensed (Victoria and New South Wales), which are also the largest states, in terms of wagering revenues, and racing activity.<sup>117</sup> This indicates that racing associations in these states obtained [HIGHLY Confidential to Tabcorp] [REDACTED], than those in states where the local wagering operator is Tatts. As Tatts is a smaller wagering operator, this indicates that Tabcorp's larger size, and the history of consolidation, did not result in any worse terms for racing associations in states where Tabcorp is the retail wagering licensee.

275.2. If anything, this calculation, which is based on Tabcorp's wagering turnover, is likely to be biased to show higher, not lower, turnover (and therefore a higher ratio of turnover to racing prize money) in states where Tabcorp is licensed, as there appears to be a [HIGHLY Confidential to Tabcorp] [REDACTED] [REDACTED] racing. Figure 50 shows the tote racing wagering turnover generated by each of the New South Wales and Victoria totes, broken down according to the state in which the racing took place. [HIGHLY Confidential to Tabcorp] [REDACTED]

---

<sup>117</sup> Racing in Tasmania accounts for a very small share of wagering turnover, and of prize money.

## Confidential Restriction on Publication Claimed

[HIGHLY Confidential to Tabcorp]



275.3. This ratio is [HIGHLY Confidential to Tabcorp] over time, in all states and territories, in particular since 2011. This indicates that racing associations obtained [HIGHLY Confidential to Tabcorp]. This may be because the racing associations have been able to find additional sources of funding (for example, race field fees) or because the wagering operators are able to extract less of the value of these races (for example, due to increasing competition from corporate bookmakers).<sup>118</sup> This indicates that the recent history of consolidation amongst wagering licensees did not result in any worse terms for racing associations.

---

<sup>118</sup> See Assumptions, paragraphs 92-95 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

276. Based on the information available to me, it appears unlikely that the merger will have any significant adverse effect on the relationship between wagering turnover and funding for racing. Accordingly, the effect of the merger on wagering turnover and revenues generated by the parties is likely to be the most important consideration.

### IV.C. Wagering turnover

277. As noted above, the proposed merger is likely to give rise to a number of efficiencies that are likely to increase the turnover and revenues generated by the merged entity, relative to the parties under the relevant counterfactual.

277.1. The merged firm will achieve substantial ongoing cost synergies. These cost savings will directly increase the merged entity's contributions to racing. The merged entity will contribute [Confidential to Tabcorp] [REDACTED] as a result of these cost and capex synergies to applicable racing industry bodies in accordance with its current agreements to do so.<sup>119</sup> Moreover, these cost savings will allow the merged entity to consider further investments in improving the quality of its wagering services, which may result in further uplift to its turnover and revenues, and hence further incremental contributions to racing.

277.2. The merged firm will achieve substantial revenue synergies through business improvements. These initiatives will directly and significantly increase the merged entity's wagering turnover and revenues, and hence its contribution to racing, [Confidential to Tabcorp] [REDACTED].<sup>120</sup> Moreover, these business improvements will also increase the profitability of the merged entity, and allow it to invest more in new products and better quality services, making it a more effective competitor, in particular against corporate bookmakers, which may result in a further uplift to funding for racing.

---

<sup>119</sup> See Assumptions, paragraph 164 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>120</sup> See Assumptions, paragraph 182 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

277.3.A merger could lead to further co-mingling between tote pools currently operated independently by each party, and as such may result in more attractive pools for punters, that would make tote wagering more competitive against fixed odds wagering, in particular that offered by the corporate bookmakers. Such an improvement would be likely to further increase the turnover and revenues of the merged entity, and hence the contribution to racing.

### IV.C.i. Contributions of corporate bookmakers

278. A significant part of the anticipated increase in wagering turnover of the merged entity is likely to be at the expense of lower turnover and revenues for the corporate bookmakers. However, corporate bookmakers make a lower contribution to racing, per unit of turnover.<sup>121</sup> Accordingly, even if a significant part of any increase in the parties' wagering turnover and revenues is at the expense of those of the corporate bookmakers, this would result in an increase in funding for the racing industry.

279. Accordingly, the merger is unlikely to harm funding for racing, but rather is likely to enhance it. The total amount of ongoing cost and revenue synergies that would be paid to the racing industry in accordance with existing agreements as a result of the merger would be at least **[Confidential to Tabcorp]** [REDACTED].<sup>122</sup>

---

<sup>121</sup> See Assumptions, paragraph 43 (Tab 1 of PS-2 [TBP.001.027.1974]).

<sup>122</sup> See Assumptions, paragraph 186 (Tab 1 of PS-2 [TBP.001.027.1974]).

## V. Total economic welfare

### V.A. Framework for the assessment

280. The immediate economic impact of the proposed merger depends on the two effects described previously – the effect on competition, and the effect on funding for the racing industry – as well as the potential for efficiencies that are not relevant to the competition or funding analyses.
281. However, the ultimate effect on total economic welfare, will also depend on the implications of each of these economic flows.

### V.B. Competition in wagering services

282. As discussed above, the merger is unlikely to lead to any significant harm to competition, but rather is likely to give rise to a number of efficiencies that would make the merged entity a more effective competitor against the corporate bookmakers. In particular, the proposed merger will reduce the costs, and increase the turnover and revenues of the merged entity, allowing it to invest in improving the quality of its retail and online wagering offering, introduce a wider variety of new bet types, and potentially offer deeper and more stable co-mingled pools. A significant part of the anticipated increase in the merged entity's turnover and revenues is likely to be at the expense of the corporate bookmakers.
283. The ultimate impact on total economic welfare is likely to be positive, given that the anticipated efficiencies are expected to be net positive in terms of industry turnover (output), and profitability.
284. It is difficult to consider fully the economic implications of second and third round effects. By way of illustration, I do not have sufficient information to estimate or calibrate the net effect of cannibalisation of \$1 of turnover from a corporate bookmaker to the parties. The

## Confidential Restriction on Publication Claimed

net effect of this cannibalisation would likely depend on the different payout ratios applied, and the differential scope for multiplier effects: corporate bookmakers are likely to apply higher payout ratios, therefore leaving more money in punters' hands, which might be used to enhance economic welfare; conversely, the merged entity is likely to still be less cost efficient than corporate bookmakers, so the additional turnover is more likely to give rise to multiplier effects within the parties' cost bases. I do not have information available to me that would indicate a sufficiently certain and specific pattern of second and third round effects that would overturn my conclusion that the ultimate impact on total economic welfare is likely to be positive.

### V.C. Funding for racing

285. The merger is unlikely to harm funding for racing, but rather is likely to enhance it. The merger is likely to result in a significant increase of the turnover and revenue of the merged entity, which would lead to additional funding for racing. The ultimate impact on economic welfare will depend on the multipliers that would apply to this additional funding, within the racing and associated industries.
286. The total amount of ongoing cost and revenue synergies that would be paid to the racing industry in accordance with existing agreements as a result of the merger would be at least **[Confidential to Tabcorp]** [REDACTED].<sup>123</sup>
287. Additional funding is likely to be applied to investments in the racing industry and stakes and other prize money, which is used to attract owners, trainers and jockeys.
288. The ultimate impact on total economic welfare is likely to be positive, given that the anticipated increase in funding for racing will be net positive.

---

<sup>123</sup> See Assumptions, paragraph 186 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

289. It is again difficult to consider fully the economic implications of second and third round effects. In this context, I do not have sufficient information on how the racing associations operate, and how they might be required to, or might choose to, spend these additional funds. I do not have information available to me that would indicate sufficiently certain and specific pattern of second and third round effects that would overturn my conclusion that the additional funding for racing that is likely to be caused by the merger, is likely to enhance total economic welfare.

### **V.D. Additional pecuniary efficiencies for the merged firm**

290. As noted above, the proposed merger is likely to give rise to a number of efficiencies that are likely to increase the turnover and revenues generated by the merged entity, relative to the parties under the relevant counterfactual. Some of these efficiencies are likely to result in benefits to consumers through enhancing the effectiveness of the merged entity in competing with the corporate bookmakers. However, some of these synergies are less likely to be directly passed on to benefit consumers, and will more likely be a direct benefit for the merged entity.

290.1. The merged firm will achieve substantial ongoing cost synergies. The majority of the cost savings are assumed to affect fixed costs and so would be less likely to be passed through to prices (at least in the short-term). While a significant portion of these annual fixed costs savings are likely to affect the ability and incentive of the merged entity to invest in new products and other quality improvements, to the extent that any of these savings are not passed on, they would still accrue to the merged entity (and its shareholders) as additional profits. The proposed merger is also assumed to lead to net one-off merger integration costs and capital expenditure of approximately [Confidential to Tabcorp] ██████████<sup>124</sup> While

---

<sup>124</sup> See Assumptions, paragraph 165 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Confidential Restriction on Publication Claimed

these merger integration costs will reduce producer surplus from the merger, they are likely to result in additional economic activity for other economic entities.

290.2. The merged firm will achieve substantial revenue synergies through business improvements. These initiatives will directly and significantly increase the merged entity's wagering turnover and revenues. Some of these business improvements, in particular those related to improving Tatts' fixed odds yield, are anticipated to result in a decrease in turnover, but an increase in revenues. This increase in revenues (and hence profitability) may allow the merged entity to invest more in new products and better quality services, making it a more effective competitor, in particular against corporate bookmakers, which may result in further uplift to funding for racing. However, to the extent that this increase in revenues is not reinvested in this way, this would result in additional profitability for the merged entity and its shareholders, as well as increases in the funding for the racing industry, as discussed above.

290.3. The additional wagering revenues (and resulting profitability) will also result in higher fees and taxes for a wider set of stakeholders, outside of racing. In particular, other sporting bodies will receive an additional **[Confidential to Tabcorp]** [REDACTED], retail wagering venues, such as pubs, clubs and agencies, will receive an additional **[Confidential to Tabcorp]** [REDACTED], and state and federal governments will receive an additional **[Confidential to Tabcorp]** [REDACTED].

<sup>125</sup>

---

<sup>125</sup> See Assumptions, paragraph 182 (Tab 1 of PS-2 [TBP.001.027.1974]).

## Annex 1 – The effect of changes in tote payout rate on punter demand

291. In this annex, I present my empirical assessment of the effects of changes in tote payout rates on punter demand. Specifically, I consider the available data on turnover for specific bet types in response to a number of abrupt changes in payout rates for those same bet types.

292. Identifying the effects of changes in payout rates on punter demand may be complicated by the various confounding factors and trends that appear to have affected tote racing wagering turnover (such as the relative growth of fixed odds wagering, and the growth of sports wagering, as discussed above). The relationship between payout rates and punter demand may also be affected by simultaneity: while I have tried to identify the effect of changes in payout rates on punter demand, there may simultaneously be effects in the opposite direction, i.e. payout rates might be set in anticipation of expected changes in punter demand. In this annex I have tried to identify the effects of changes in payout rates on punter demand by considering a number of abrupt changes in payout rates for specific bet types, and considering changes in wagering turnover that coincided with those changes in payout rates, thereby assuming that isolated, and in some cases temporary, changes in payout rates are exogenous to punter demand.

293. Over the period 2008 to 2016, Tabcorp [Confidential to Tabcorp] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Since there were only a limited number of such changes that were introduced abruptly and resulted in a significant short term change in payout rates, I have considered these changes as exogenous, and have examined whether punter demand was significantly different in the period during which the tote takeout rates were temporarily altered, compared with demand in the surrounding

## Confidential Restriction on Publication Claimed

periods. In particular, I have analysed whether or not four changes in payout rates have had a significant impact on punter demand (turnover).

293.1. [Confidential to Tabcorp] [REDACTED]  
[REDACTED]  
[REDACTED] However, there was [HIGHLY Confidential to Tabcorp] [REDACTED] in punter demand (turnover) in either of these tote pools, in response to the [Confidential to Tabcorp] [REDACTED] payout rates that were available during this period.

293.2. [Confidential to Tabcorp] [REDACTED]  
[REDACTED]  
[REDACTED] However, again, there was [HIGHLY Confidential to Tabcorp] [REDACTED] in punter demand (turnover), in either state, in response to the [Confidential to Tabcorp] [REDACTED].

294. Figure 51 and Figure 52 show average weekly payout rates and weekly turnover for win bets on races held in Australia on each of the Victoria and New South Wales tote pools respectively over the period January 2008 to June 2016. [Confidential to Tabcorp]

[REDACTED]  
[REDACTED] The payout rates [HIGHLY Confidential to Tabcorp] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp] [REDACTED]



295. I would like to compare turnover on win bets during the periods in which [Confidential to Tabcorp] [REDACTED] payout rates were available, to the turnovers on win bets during comparable periods in which payout rates were [Confidential to Tabcorp] [REDACTED]. In order to perform such a comparison, it is necessary to control for other factors, such as seasonality, or trends over time, which may affect turnover. The turnovers shown in Figure 51 and Figure 52 appear to exhibit significant seasonality, with fluctuations in similar months each year, and moreover there appears to be a significant [HIGHLY Confidential to Tabcorp] [REDACTED] trend in the tote turnovers received from one year to the next.

296. The following simple regression model can be applied to control for seasonality and trends over time. Such a regression would test whether or not tote turnover was significantly higher in the months in which the payout rate was higher, relative to similar months in adjacent years, while attempting to control for seasonality and trends in turnover over time.

$$turnover_t = f(payout_t, month_t, year_t),$$

## Confidential Restriction on Publication Claimed

296.1.  $turnover_t$  refers to Tabcorp's weekly tote racing turnover on Win bets on races held in Australia in week  $t$ .

296.2.  $payout_t$  is a dummy variable which equals one if Tabcorp's tote racing takeout rates were [Confidential to Tabcorp] (implying that payout rates [Confidential to Tabcorp]) in week  $t$  for Win bets, and zero otherwise. The variable equals one for a total of [Confidential to Tabcorp].

296.3.  $month_t$  is the calendar month at the start of week  $t$ , and is intended to capture seasonal effects following the racing calendar.

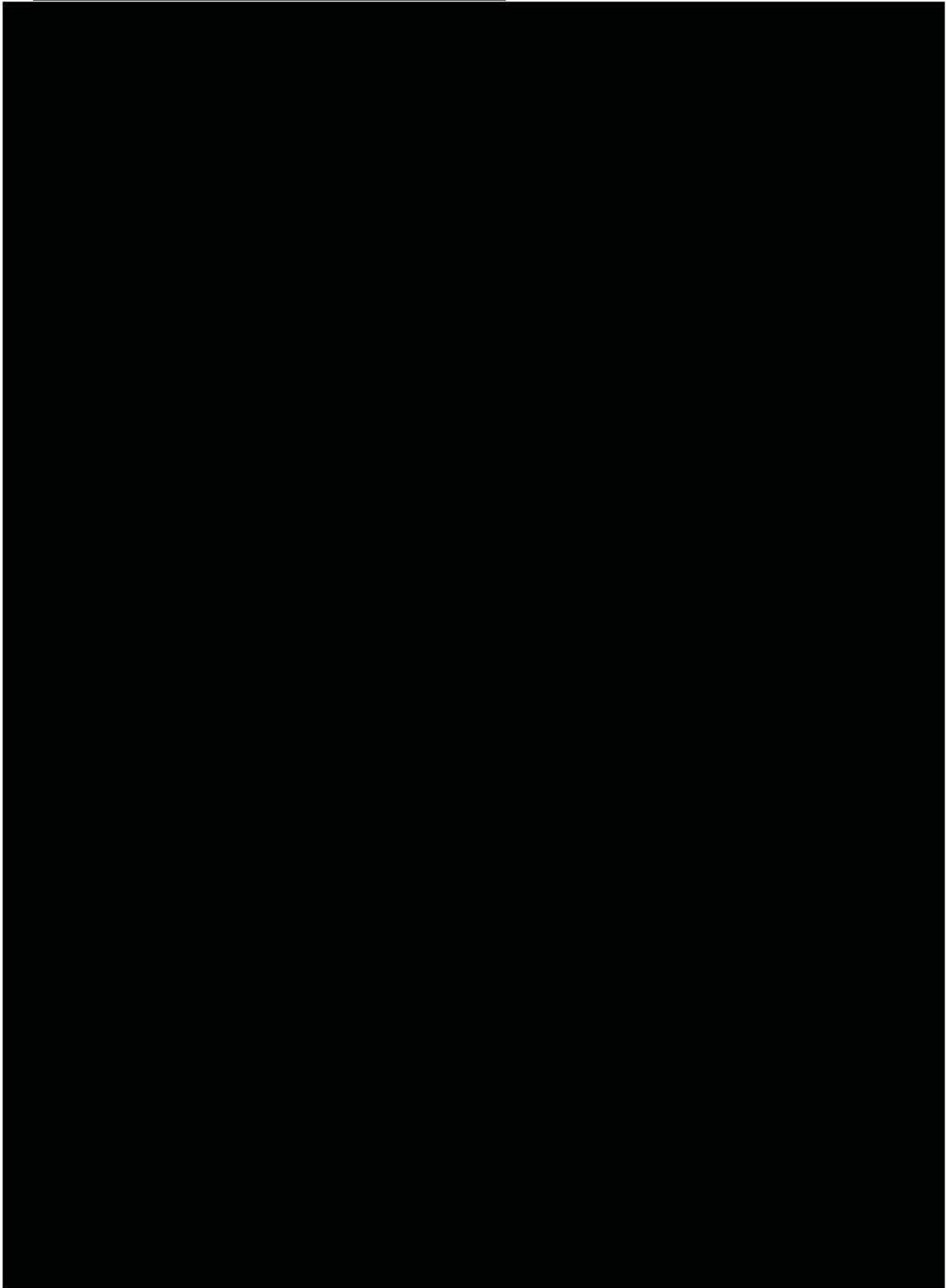
296.4.  $year_t$  refers to the calendar year of week  $t$ . This variable captures long term trends in tote racing wagering in each state. Since separate regressions are run for each state, these trends might be due to differences in pool sizes that may have developed over time, as well as local changes in punter demand.

297. The model is assumed to be linear, and Ordinary Least Squares has been used to estimate the model parameters. The variance-covariance matrix of the parameter estimates are estimated using a heteroscedasticity and autocorrelation consistent covariance matrix estimator, which accounts for non-constant variance in the error term over time and correlation between the error terms across different time periods.

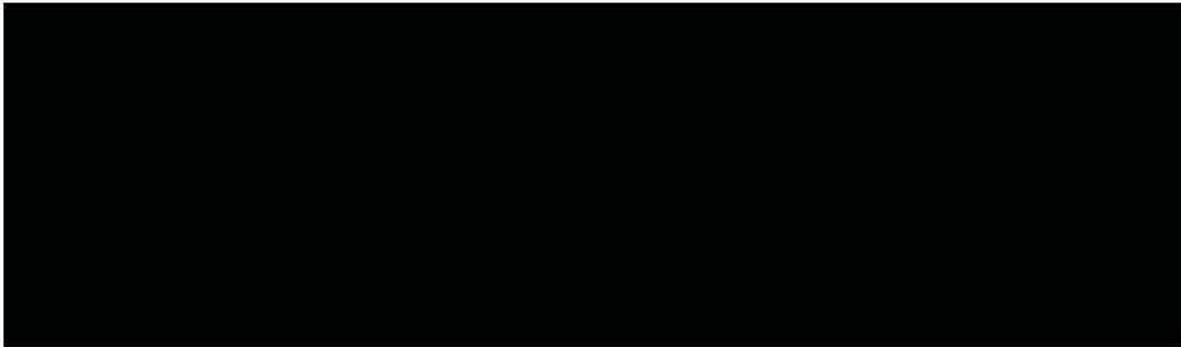
298. Since turnover, in particular in regard to the New South Wales tote, before 2008 displays substantial noise, the time period of the regression is restricted to January 2008 to June 2016. The estimates from the regressions for each state are provided in Table 1 below.

**Confidential Restriction on Publication Claimed**

[HIGHLY Confidential to Tabcorp]



**Confidential Restriction on Publication Claimed**



299. The parameter estimates on the payout variable are **[HIGHLY Confidential to Tabcorp]** [REDACTED], at any conventional level of confidence. These results indicate that once seasonality and time trends are controlled for, **[Confidential to Tabcorp]** [REDACTED] **[HIGHLY Confidential to Tabcorp]** [REDACTED] on turnover.

300. In order to test the robustness of this result, and to increase the degrees of freedom in this regression, I have also performed an alternative specification in which the calendar month explanatory variable has been converted to a dummy denoting the quarter of the year. This is still intended to capture the seasonality in the racing calendar, in which the final quarter, in particular, is typically the period where wagering turnover on racing is substantially higher than at other times of the year, but this only requires four dummy variables, rather than 12. Table 2 below shows the results from regressions of weekly turnover on Win bets on races held in Australia, with this alternative specification.



**Confidential Restriction on Publication Claimed**



301. Again, the parameter estimates on the payout variable are **[HIGHLY Confidential to Tabcorp]** [REDACTED], at any conventional level of confidence. These results again indicate that once seasonality and time trends are controlled for, **[Confidential to Tabcorp]** [REDACTED] **[HIGHLY Confidential to Tabcorp]** [REDACTED] on turnover.

302. In order to further increase the degrees of freedom, I have also performed a specification in which there is no attempt to control for seasonality (no month, nor quarter dummy variables are included), and instead of using individual annual dummies to account for longer term trends in tote wagering, a single linear trend is used (year). Table 3 below

## Confidential Restriction on Publication Claimed

shows the results from the regression of weekly turnover on Win bets on races held in Australia using this third specification.

[HIGHLY Confidential to Tabcorp]

303. Again, the parameter estimates on the payout variable are [HIGHLY Confidential to Tabcorp], at any conventional level of confidence. Even without controlling for seasonality, the results again indicate that [Confidential to Tabcorp] [HIGHLY Confidential to Tabcorp] on turnover.

304. These specifications all show [HIGHLY Confidential to Tabcorp] on the variable indicating the period during which the payout rates were changed. While some of the effect of this variable may have been captured by other regressors, particularly in the regressions also controlling for calendar month or quarter, the various results lead to the same conclusion – the null hypothesis that changes in tote payout rates were not correlated with a change in turnover [HIGHLY Confidential to Tabcorp] reasonably be rejected.

**Confidential Restriction on Publication Claimed**

305. Tabcorp also **[Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED]. Figure 53 and Figure 54 show these **[Confidential to Tabcorp]** [REDACTED] weekly tote payout rates, along with the corresponding turnovers, for each of the Victoria and New South Wales totes.

**[HIGHLY Confidential to Tabcorp]** [REDACTED]

306. Similar to the case of the **[Confidential to Tabcorp]** [REDACTED] in the periods before **[Confidential to Tabcorp]** [REDACTED] in payout rates, to the turnovers on the same exotic bets in comparable periods after **[Confidential to Tabcorp]** [REDACTED] in payout rates. In order to perform such a comparison, it is necessary to control for other factors, such as seasonality, or trends over time, which may affect turnover. The turnovers shown in Figure 53 and Figure 54 appear to exhibit significant seasonality, with fluctuations in similar months each year, and moreover there appears to be **[HIGHLY**

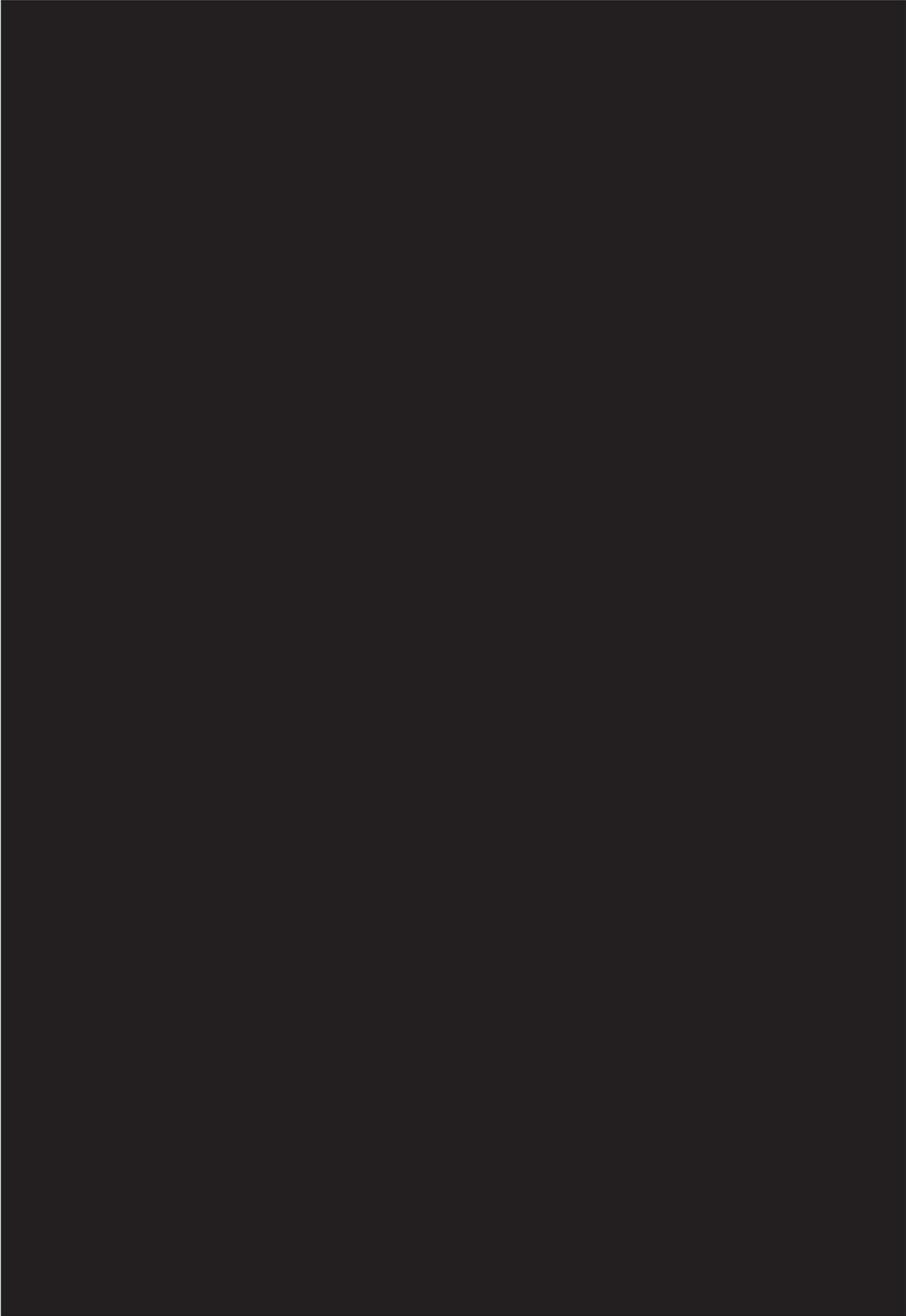
**Confidential to Tabcorp** [REDACTED] in the tote turnovers received from one year to the next.

307. The following simple regression model can be applied to control for seasonality and trends over time. Such a regression would test whether or not tote turnover was significantly higher in the period in which the payout rate was **Confidential to Tabcorp** [REDACTED], relative to similar months in adjacent years, while attempting to control for seasonality and trends in turnover over time.

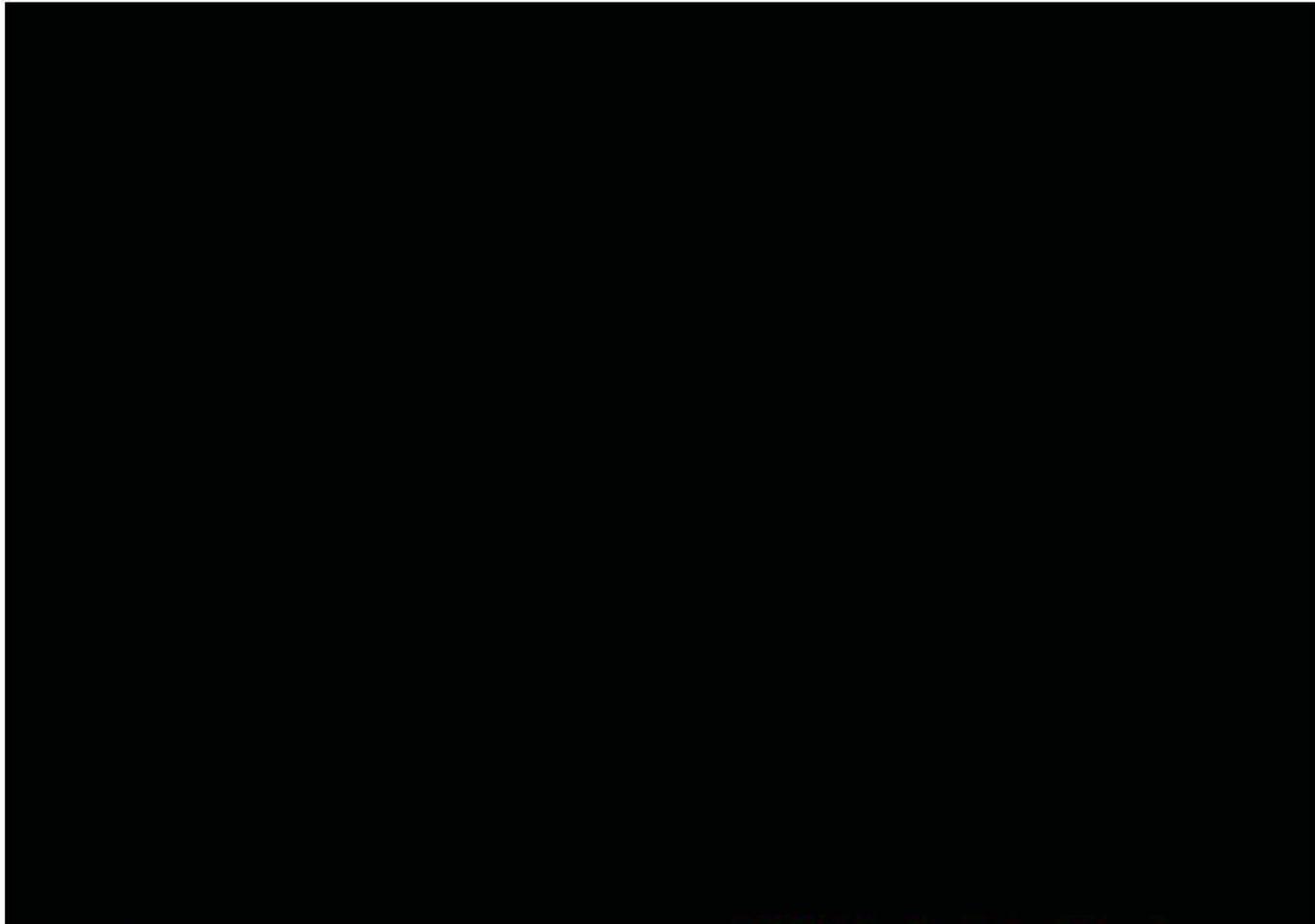
308. Estimates from regression models specified similar to Table 1, Table 2 and Table 3 are shown below in Table 4, Table 5 and Table 6. Table 4 and Table 5 however differ from Table 1 and Table 2 by excluding the year dummies, and instead control for longer term trends by restricting the sample period; if year dummies were included, there is a risk that they would capture much of the effect as the variable of interest, in particular in periods after the **Confidential to Tabcorp** [REDACTED] in payout rates. This would mean that the impact of the payout variable and year variable could not be separately identified.

**[HIGHLY Confidential to Tabcorp]** [REDACTED]





**Confidential Restriction on Publication Claimed**



309. Each of these specifications once again indicates **[HIGHLY Confidential to Tabcorp]**  significant effect of **[Confidential to Tabcorp]**  tote payout rates on demand for tote wagering.

## Annex 2: List of external sources

- Vickers, John (2002). "Competition economics and policy: A speech on the occasion of the launch of the new social sciences building at Oxford University." Available online at [http://webarchive.nationalarchives.gov.uk/20100113210150/http://oft.gov.uk/shared\\_oft/speeches/spe0702.pdf](http://webarchive.nationalarchives.gov.uk/20100113210150/http://oft.gov.uk/shared_oft/speeches/spe0702.pdf)
- Australian Competition & Consumer Commission (2008). Merger guidelines. Available online at <http://www.accc.gov.au/system/files/Merger%20guidelines.pdf>
- RBB Economics (2014). "Cost pass-through: theory, measurement, and potential policy implications" (prepared on behalf of UK's Office of Fair Trading). Available online at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/320912/Cost\\_Pass-Through\\_Report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320912/Cost_Pass-Through_Report.pdf)
- Screenshots of FO and tote racing odds offered on betting websites.
  - I. Screenshot of [www.tab.com.au](http://www.tab.com.au), accessed 20 January 2017
  - II. Screenshot of [www.sportsbet.com.au](http://www.sportsbet.com.au), accessed 20 January 2017
- Screenshots of odds comparison websites.
  - I. Screenshot of [https://www.punters.com.au/odds-comparison/horse-racing/australia/cranbourne\\_92309/countdown-to-karaka-2017- maiden-plate\\_532972/](https://www.punters.com.au/odds-comparison/horse-racing/australia/cranbourne_92309/countdown-to-karaka-2017- maiden-plate_532972/), accessed 1 February 2017
  - II. Screenshot of [https://www.bestodds.com.au/odds/horse-racing/united-kingdom/Kempton\\_91184/Smarter-Bets-With-Matchbook-Betting-Exchange-Handicap\\_527602/](https://www.bestodds.com.au/odds/horse-racing/united-kingdom/Kempton_91184/Smarter-Bets-With-Matchbook-Betting-Exchange-Handicap_527602/), accessed 23 February 2017

## Confidential Restriction on Publication Claimed

- Screenshots of Google Trends results.
  - I. Screenshot of <https://trends.google.com.au/trends/explore?date=2015-01-01%202017-02-01&q=Punters.com.au>, accessed 23 February 2017
  - II. Screenshot of <https://www.google.com.au/trends/explore?date=2015-01-01%202017-02-01&q=punters.com.au,sportsbet.com.au,tabcorp.com.au,ubet.com>, accessed 23 February 2017
- Queensland Government (2016). "Australian Gambling Statistics 1989-90 to 2014-15. 32<sup>nd</sup> edition. Product Tables." Available online at <http://www.qgso.qld.gov.au/products/reports/aus-gambling-stats/aus-gambling-stats-32nd-edn-product-tables.pdf>
- TAB Help Centre (2015). "Bet types available on TAB Racing (NSW and VIC)." Available online at [http://tab.custhelp.com/app/answers/detail/a\\_id/93/~bet-types-available-on-tab-racing-\(nsw-and-vic\)](http://tab.custhelp.com/app/answers/detail/a_id/93/~bet-types-available-on-tab-racing-(nsw-and-vic)), accessed 23 February 2017
- Paddy Power annual reports:
  - I. Paddy Power (2009). "2008 Annual Report." Available online at <https://www.paddypowerbetfair.com/~media/Files/P/Paddy-Power-Betfair/archive/reports-presentations/paddy-power/2008annualreport.pdf>
  - II. Paddy Power (2012). "2011 Annual Report." Available online at <https://www.paddypowerbetfair.com/~media/Files/P/Paddy-Power->

## Confidential Restriction on Publication Claimed

[Betfair/archive/reports-presentations/paddy-power/annualreport2011.pdf](https://www.paddypowerbetfair.com/~media/Files/P/Paddy-Power-Betfair/archive/reports-presentations/paddy-power/annualreport2011.pdf)

- III. Paddy Power (2014). "2013 Annual Report." Available online at <https://www.paddypowerbetfair.com/~media/Files/P/Paddy-Power-Betfair/archive/reports-presentations/paddy-power/2013annualreport.pdf>
  - IV. Paddy Power (2015). "2014 Annual Report." Available online at <https://www.paddypowerbetfair.com/~media/Files/P/Paddy-Power-Betfair/archive/reports-presentations/paddy-power/annual-report-full.pdf>
  - V. Paddy Power (2016). "Annual Report 2015." Available online at <https://www.paddypowerbetfair.com/~media/Files/P/Paddy-Power-Betfair/documents/annual-report-2015-v2.pdf>
- William Hill annual reports:
    - I. William Hill (2014). "Annual Report and Accounts 2013." Available online at [http://files.williamhillplc.com/media/1202/ar\\_2013.pdf](http://files.williamhillplc.com/media/1202/ar_2013.pdf)
    - II. William Hill (2015). "Annual Report and Accounts 2014." Available online at <http://files.williamhillplc.com/media/1832/2014-final-results-accounts.pdf>
    - III. William Hill (2016). "Annual Report and Accounts 2015." Available online at [http://files.williamhillplc.com/media/3612/williamhill\\_ar15.pdf](http://files.williamhillplc.com/media/3612/williamhill_ar15.pdf)
  - Ladbrokes (2014). "Annual Report and Accounts 2013." Available online at [http://ar2013.ladbrokesplc.html.investis.com/downloads/Ladbrokes\\_ARA\\_2013.pdf](http://ar2013.ladbrokesplc.html.investis.com/downloads/Ladbrokes_ARA_2013.pdf)

## Confidential Restriction on Publication Claimed

- Unibet annual reports:
  - I. Unibet (2012). "2012 Annual Report." Available online at <http://www.kindredplc.com/wp-content/uploads/2016/11/2012-Annual-Report-1.pdf>
  - II. Unibet (2014). "2014 Annual Report." Available online at <http://www.kindredplc.com/wp-content/uploads/2016/11/2014-Annual-Report-1.pdf>
- Tirole, Jean (1988). "The Theory of Industrial Organisation." MIT Press. Section 7.1.1.1 (pages 279-281)
- Rölller, Lars-Hendrik, Stennek, Johan & Verboven, Frank (2006). "Efficiency Gains from Mergers, in European Merger Control: Do We Need an Efficiency Defense?" Edward Elgar (UK). Available online at [http://ec.europa.eu/dgs/competition/economist/efficiency\\_gains.pdf](http://ec.europa.eu/dgs/competition/economist/efficiency_gains.pdf)
- Australian Racing Board (2009). Submission to the Gambling Productivity Commission Inquiry. Available online at <http://www.pc.gov.au/inquiries/completed/gambling-2009/submissions/sub213.pdf>
- Racing Factbook reports:
  - I. Racing Australia (2007). "A Guide to the Racing Industry in Australia 2006-2007." Available online at <http://www.racingaustralia.horse/fact-book/factbook0607.pdf>
  - II. Racing Australia (2008). "A Guide to the Racing Industry in Australia 2007-2008." Available online at <http://www.racingaustralia.horse/fact-book/arbFinalBook.pdf>

## Confidential Restriction on Publication Claimed

- III. Racing Australia (2009). "A Guide to the Racing Industry in Australia 2008-2009." Available online at <http://www.racingaustralia.horse/fact-book/arb09.pdf>
- IV. Racing Australia (2010). "A Guide to the Racing Industry in Australia 2009-2010." Available online at <http://www.racingaustralia.horse/fact-book/ARB2010b.pdf>
- V. Racing Australia (2011). "A Guide to the Racing Industry in Australia 2010-2011." Available online at <http://www.racingaustralia.horse/fact-book/factbook2011.pdf>
- VI. Racing Australia (2012). "A Guide to the Racing Industry in Australia 2011-2012." Available online at [http://publishingservices.risa.com.au/otherpublications/ARB\\_factbook\\_2012/files/assets/common/downloads/publication.pdf](http://publishingservices.risa.com.au/otherpublications/ARB_factbook_2012/files/assets/common/downloads/publication.pdf)
- VII. Racing Australia (2013). "A Guide to the Racing Industry in Australia 2012-2013." Available online at [http://www.racingaustralia.horse/fact-book/ARB\\_Fact\\_Book\\_2013\\_v18112013\\_Single\\_Page.pdf](http://www.racingaustralia.horse/fact-book/ARB_Fact_Book_2013_v18112013_Single_Page.pdf)
- VIII. Racing Australia (2014). "A Guide to the Racing Industry in Australia 2013-2014." Available online at <http://publishingservices.risa.com.au/otherpublications/FactBook%20201314/files/assets/common/downloads/publication.pdf>
- IX. Racing Australia (2016). "A Guide to the Racing Industry in Australia 2014-2015." Available online at <http://publishingservices.risa.com.au/otherpublications/Factbook%20201415/files/assets/common/downloads/publication.pdf>

## Confidential Restriction on Publication Claimed

[02014-2015/Factbook2014-](#)

[2015/files/assets/common/downloads/publication.pdf](#)

- Racing Victoria (2016). “2016-2017 Victorian Race Dates released.” Available online at <https://rv.racing.com/news/2016-04-15/2016-17-victorian-race-dates-released>, accessed 23 February 2017
- Australian Government Productivity Commission (2010). “Gambling Productivity Commission Inquiry Report.” Volume 2. Available online at <http://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume2.pdf>
- Tabcorp annual reports:
  - I. Tabcorp (2007). “2007 Concise Annual Report.” Available online at <https://tabcorp.com.au/getattachment/8a9c2fd2-f783-4cef-a54f-7cf5d09bfaab/2007-Concise-Annual-Report>
  - II. Tabcorp (2008). “2008 Concise Annual Report.” Available online at <https://tabcorp.com.au/getattachment/43175670-3c00-4606-bcd8-fb0dc14c668f/2008-Concise-Annual-Report>
  - III. Tabcorp (2009). “2009 Concise Annual Report.” Available online at <https://tabcorp.com.au/getattachment/ba4d988f-fb2e-4bfc-a7dc-f39bc707ccb7/2009-Concise-Annual-Report>
  - IV. Tabcorp (2010). “2010 Concise Annual Report.” Available online at <https://tabcorp.com.au/getattachment/adbab5a0-a42d-45d9-b4cb-ae0b26bca9f6/2010-Concise-Annual-Report>

## Confidential Restriction on Publication Claimed

- V. Tabcorp (2011). "2011 Concise Annual Report." Available online at <https://tabcorp.com.au/getattachment/b6db6e8b-58dc-4c0f-a779-cf4b54307d44/2011-Concise-Annual-Report>
- VI. Tabcorp (2012). "2012 Concise Annual Report." Available online at <https://tabcorp.com.au/getattachment/a73773b8-91dd-4a0b-b37f-bd82e59ead9c/2012-Concise-Annual-Report>
- VII. Tabcorp (2013). "2013 Concise Annual Report." Available online at <https://tabcorp.com.au/getattachment/6506d8ed-a447-4ed8-a67c-b3ac95e3d47f/2013-Concise-Annual-Report>
- VIII. Tabcorp (2014). "2014 Concise Annual Report." Available online at <https://tabcorp.com.au/getattachment/2e30f7e5-9eea-434f-abd0-a94c2faea7e8/2014-Concise-Annual-Report>
- IX. Tabcorp (2015). "2015 Concise Annual Report." Available online at <https://tabcorp.com.au/getattachment/d7384410-72e9-47b1-aa9e-5c8023cb9ca9/2015-Concise-Annual-Report>
- X. Tabcorp (2016). "2016 Annual Report." Available online at <https://tabcorp.com.au/TabCorp/media/TabCorp/Investors/Annual%20Report/Annual-Report-2016.pdf>