



MERCURY

Submission to the Australian Competition Tribunal

Re Application by Tabcorp Holding Limited for authorisation for proposed acquisition of Tatts Group Ltd

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1. Mercury Group Victoria (**Mercury**) is grateful for the opportunity lodge a written submission with the Tribunal on the proposed merger of Tabcorp and Tatts.
2. Mercury is a Membership based not-for-profit gaming services provider to venue operators in Victoria. Mercury is owned and controlled by its Members. All the current Mercury Members are not-for-profit, community clubs. There is provision in Mercury's constitution for Membership by for-profit hotels, although currently there are no pub Mercury Members.
3. In preparing this submission Mercury has canvassed the views of its Members and makes this submission on behalf of its 45 Member clubs and itself as a gaming service provider.
4. Mercury's has limited this submission to issues raised at 10(a). Mercury submits that the merged entity should be prohibited from owning or acquiring any monitoring service in any jurisdiction, particularly the Victorian monitor.
5. Mercury Members have each entered a tripartite agreement between Mercury, eBET and the Mercury Member for the provision of eBET's loyalty/Membership system.
6. The eBET loyalty system collects comprehensive machine and player data. Since the acquisition of eBET by Tabcorp, Tabcorp has access to Mercury Venues' databases. This presents a current problem for Mercury Venues all of whom are competitors of TGS venues. Mercury raised these concerns with eBET when the takeover was announced, and eBET undertook verbally to keep the data confidential, however no formal undertaken has been provided, and Mercury's concern about the integrity of its data continues.
7. This problem is exacerbated if the merged entity also controls monitoring in Victoria. Tatts is currently negotiating with Intralot to purchase Intralot's Australian operation.
8. The merged entity will compete on many levels with service and product providers in each jurisdiction.
9. The monitor in any jurisdiction has access to all gaming machine data of the venues which they monitor.
10. In Victoria if the merged entity owns the monitor, **all** the gaming machine data of TGS's competitor venues will be in the possession of TGS's holding company and potentially available to TGS. This is of particular concern to Mercury and Mercury Members.
11. TGS will ostensibly have data for venues that compete with TGS venues (eg Mercury Members' venues). TGS will have access to data relating to other service providers (eg Mercury) and machine data that is not available to its competitors.
12. In Victorian TGS's competitors have no alternative provider of monitoring services.

13. The monitor may make aggregated and individual data available to TGS and not to TGS competitors.
14. As the controller of the monitor (especially in Victoria), the merged entity will be able to favour TGS venues when commissioning machines. The connection of machines to the monitoring service is a major consideration when upgrading gaming product at venues – both time and cost. Any actual or perceived favouritism by the monitor towards its “stable-mate” in the scheduling of these services is potentially disadvantageous for TGS competitors.
15. Current lead-times for deployments are often up to 6 weeks. It has occurred that venue operators have “jumped the queue” by paying for an Intralot employee to commission their machines to ensure preferential commissioning/deployment treatment. Clearly there is opportunity for manipulation of delivery times and costs. TGS venues would be greatly benefited by manipulation of the queue for commissioning/deploying gaming product.
16. New gaming product (eg TITO and CardIT) will be introduced at a price to the Venues. It is conceivable a monitor controlled by the merged entity will advantage TGS Venues in time and cost for introduction.
17. Currently Victorian legislation prohibits a company listed on the Roll from being the monitor or being related to the monitor. This prohibition would block the merged entity from operating TGS, Bytecraft, MAX, and eBET at the same time as it conducted the monitor in Victoria.
18. However, a company with the size and influence of the merged entity is well placed to pressure a change in the Victorian legislation, especially as the prohibition on cross-licensing is unique to Victoria.
19. It is submitted that the prohibition on cross-licensing in Victoria is appropriate, and as TGS expands its operations into other jurisdictions those states would benefit from a similar prohibition. There is no practical means of knowing if the merged entity has allowed the monitoring data to be accessed by its non-monitor subsidiaries. Given the potential for abuse of the data collected, Mercury submits that a condition of the authorisation for the merger should be that the merged entity be prohibited from providing monitoring services in any jurisdiction, especially in Victoria.