

**Confidential Restriction on Publication Claimed****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: **Douglas John Freeman**

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Occupation: Executive General Manager – Commercial Development

Date: 8 March 2017

This document contains confidential information which is indicated as follows:**[HIGHLY Confidential to Tabcorp] [.....]****[Confidential to Tabcorp] [.....]****[Confidential to Tabcorp and Tatts] [.....]**

Filed on behalf of Tabcorp Holdings Limited (Applicant)

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Confidential Restriction on Publication Claimed**A. INTRODUCTION**

- 1 I am employed by Tabcorp Holdings Limited (**Tabcorp**) as Executive General Manager – Commercial Development. I am authorised to make this statement on Tabcorp’s behalf.
- 2 Exhibited to me at the time of signing this statement and marked “Exhibit DF-1” is a bundle of documents. Exhibited to me at the time of signing this statement are two further bundles of documents marked “Confidential Exhibit DF-2” and “Highly Confidential Exhibit DF-3”. Where in this statement I refer to tabs in DF-1, DF-2 or DF-3, I am referring to the tabs of Exhibit DF-1, Confidential Exhibit DF-2 and Highly Confidential Exhibit DF-3 respectively. I also refer to documents by reference to their unique document number beginning with a “TBP” prefix. I have reviewed the documents I have referred to prior to signing this statement. Tabcorp claims confidentiality over Confidential Exhibit DF-2 and Highly Confidential Exhibit DF-3.
- 3 The matters set out in this statement are based on my knowledge of Tabcorp’s operations, my participation in the Senior Executive Leadership Team, my involvement with Tabcorp’s business and my experience in the wagering industry for over 11 years, which I set out in section A.1 below. I have also consulted with and made enquiries of relevant staff and records of Tabcorp and its subsidiaries.
- 4 In this statement, I refer to various statistics and figures. Unless indicated otherwise, this information has been derived from the Australian Racing Fact Book 2014 – 2015, a copy of which is at **Tab 1 of DF-1 [TBP.011.001.3106]**. Where such information has been derived from a different source, I identify that source.

A.1. Experience and employment history

- 5 I have been employed by Tabcorp since June 2005, when I was appointed as General Manager Strategy and Finance – Media Division. In August 2006, I was promoted to the role of General Manager Finance – Wagering & Media Division. In June 2011, I became Executive General Manager Strategy & Business Development – Tabcorp Group. I was appointed to my current role as Executive General Manager Commercial Development – Tabcorp Group in August 2013.
- 6 Prior to joining Tabcorp, I held senior finance and general management roles in medium to large multinational organisations in the service and manufacturing industries, including George Weston Foods Limited, Optus Group, and Alexander & Alexander Group.
- 7 In my current role I am principally responsible for:

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- (a) monitoring wagering industry trends and developments and presenting on them to Tabcorp's Senior Executive Leadership Team and to the racing industry;
- (b) coordinating various Tabcorp wagering arrangements (for example, by conducting negotiations regarding pooling and race field payment issues);
- (c) managing key operational and relationship aspects of Tabcorp's agreements with the Victorian racing industry and the New South Wales racing industry;
- (d) managing racing industry relationships in other parts of Australia;
- (e) negotiating Tabcorp's broadcasting rights; and
- (f) managing aspects of Tabcorp's mergers and acquisitions activities.

8 I report to David Attenborough, Chief Executive Officer and Managing Director of Tabcorp. My direct reports are:

- (a) Kayelene Snowden (General Manager, Commercial Projects);
- (b) Jo Madsen (General Manager, Commercial Development);
- (c) Cain Clare (Senior Business Analyst); and
- (d) Celine Choi (Commercial Projects Consultant).

9 I hold a Bachelor of Commerce from the University of New South Wales and I am a Member of the Institute of Chartered Accountants.

B. WAGERING INDUSTRY OVERVIEW

10 In this statement, when I refer to 'wagering' or 'betting', I am referring to the act of staking something, usually money, on the outcome of a contest or an event occurring or not occurring. Wagering is generally seen as a skill-based activity, involving some knowledge and study of the 'form' of the participants or contestants.

B.1. History of wagering in Australia

11 Historically, wagering in Australia was closely associated with the development of racing, initially with local or 'traditional' bookmakers. The 'totalisator', an automated system which runs pari-mutuel wagering, was originally introduced 'on-course' (to racecourses) as a response to widespread illegal bookmakers known as 'SP' (starting price) bookmakers who offered the official starting odds of a runner.

12 Various states held Royal Commissions which recommended the introduction of off-course totalisator betting agencies. At **Tab 2** of **DF-1 [TBP.015.001.5294]** is a copy of the Victorian Report of the Royal Commissioner into off-course wagering dated 27

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February 1959. In his report, Royal Commissioner Justice Martin noted that of the proposed methods for regulating off-course wagering, the totalisator would be best placed to protect the integrity of the racing industry and generate revenue for the state of Victoria and the racing clubs, in particular because in contrast to fixed odds wagering, the totalisator operator would take out its share from the pool of bets before ascertaining the payout at the end of the race and would therefore be indifferent to the result. At **Tab 3 of DF-1 [TBP.015.001.5217]** is a copy of the Full Federal Court of Australia's decision in *Victoria v Sportsbet Pty Ltd & Ors* [2012] FCAFC 143 (**Sportsbet**). The joint judgment of Justice Kenny and Justice Middleton refers to the Victorian Royal Commission and notes (**Tab 3 of DF-1 [TBP.015.001.5217]** at **[.5251]**) that in response to Justice Martin's report, the Victorian Parliament enacted legislation which created the Totalisator Agency Board (**TAB**) as a statutory body corporate to operate an off-course totalisator. As a result, until 1994, off-course betting could only be lawfully conducted in Victoria through the TAB. Ultimately, TABs were established by each state and territory in Australia (**State TABs**).

13 In the 1990s, some State TABs began to be privatised:

- (a) In 1994, the Victorian Government decided to float the TAB as a public company. Justice Emmett's judgment in *Sportsbet* (**Tab 3 of DF-1 [TBP.015.001.5217]** at **[.5223]**) states that in order to float the TAB, the Victorian Government entered into negotiations with the racing industry as represented by its controlling bodies. The outcome was a memorandum of understanding between the state and representatives of the racing industry dated 14 March 1994, a purpose of which was "to secure the financial strength and future of the Racing Industry". Tabcorp was incorporated in 1994 to acquire the business conducted by the TAB (and the licences required to conduct that business). In the same year, the *Gaming and Betting Act 1994 (Vic)* was enacted and provided for the grant to Tabcorp of a single licence to conduct wagering (being pari-mutuel betting on horse, harness and greyhound races) and approved betting competitions (as well as a licence to conduct gaming). That wagering licence was granted to Tabcorp on 28 June 1994 for an 18 year period ending in August 2012. In 2012, Tabcorp Wagering was awarded the Victorian Wagering and Betting Licence under the *Gambling Regulation Act 2003 (Vic)* (which repealed the 1994 *Gaming and Betting Act*) for a further 12 years with an option on the part of the Victorian Government to extend for a further two years (the **Victorian Wagering and Betting Licence**).

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- (b) In 1998, the New South Wales State TAB was privatised through an initial public offering and listed on the Australian Stock Exchange as TAB Limited. The New South Wales Government issued TAB Limited with a 99 year licence to conduct off-course wagering (the **New South Wales Off-Course Licence**) and on-course totalisator wagering (the **New South Wales On-Course Licence**), each with a 15 year exclusivity period (together, the **New South Wales Wagering Licences**). Tabcorp acquired TAB Limited in 2004. In September 2013, the New South Wales Government extended the exclusivity of the New South Wales Wagering Licences to June 2033.
- (c) The privatisation of TABs also occurred in Queensland (in 1999), the Northern Territory (in 2000), South Australia (in 2002), Tasmania (in 2011) and the Australian Capital Territory (in 2014).
- 14 Today, the only State TAB that has not been privatised is in Western Australia (**WA TAB**). The WA TAB is operated by the Western Australian Government-owned Racing and Wagering Western Australia (**RWWA**). RWWA supplies its totalisator and fixed odds wagering products on-course at racing venues in Western Australia, off-course at approximately 320 retail outlets in Western Australia (which includes TAB, 'pubTABs' and 'self-service' agencies) over the telephone, internet, online portal (TabTOUCH) or mobile platform (Tabtouch.mobi) for account customers.
- 15 A copy of the *Australian Gambling Comparative History and Analysis, Project Report* prepared in October 1999 by the Australian Institute for Gambling Research and the University of Western Sydney, Macarthur for the Victorian Casino and Gaming Authority is at **Tab 4 of DF-1 [TBP.015.001.1327]**. At page **[.1331]**, that report notes that wagering on sports (other than racing) was generally illegal in Australia until the 1980s. Since then, certain sports wagering has been permitted, initially only through the State TABs and then by corporate bookmakers following the legalisation of internet sports wagering from the 1990s. This is described further in the report (at **Tab 4 of DF-1 [TBP.015.001.1327]** at **[.1431]**, **[.1432]** and **[.1433]**).
- 16 In 1993, Australian corporate bookmakers Centrebet and Sportsbet each commenced operations in the Northern Territory. In 1996, Centrebet became Australia's first online bookmaker, however at that stage the popularity of the internet and use of online payments was still in its infancy. By July 2006, the wagering turnover of corporate bookmakers, that distribute their products online and via the telephone, represented approximately 17% of the total wagering industry. Since that time, there has been a marked growth in corporate bookmakers facilitated by:

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- (a) technological advances including faster internet connections, the advent of smart phones (the first generation of smart phone was introduced in 2007), tablets and digital applications (**apps**) and an associated increased use of online payments;
 - (b) regulatory advantages, including lower state wagering taxes, limited payments to the racing industry, favourable licensing conditions and low barriers to entry; and
 - (c) the relaxation of advertising laws (or their administration) following the High Court's decision in *Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418 (**Betfair**). A copy of the *Betfair* decision is at **Tab 5** of **DF-1 [TBP.014.001.3310]**.
- 17 Betting exchanges entered the Australian wagering landscape in November 2005, when the Tasmanian government announced a deal to license Betfair Pty Limited (**Betfair**) to operate a betting exchange in the state. Betfair is currently the only betting exchange operating in Australia. I describe the concept of a betting exchange at section B.8 below.
- 18 Since 2008, following the decision in *Betfair*, corporate bookmakers began to significantly increase their marketing activities across all Australian states and territories. The High Court's ruling that certain Western Australian statutory limitations on Betfair's activities violated section 92 of the *Constitution of Australia* and therefore were invalid led to state and territory governments largely repealing or amending legislative provisions which restricted advertising by wagering operators not licensed in that state or territory, or announcements that those provisions would not be enforced. In 2009, both the Victorian and New South Wales governments repealed their advertising restrictions legislation, allowing interstate wagering operators (such as corporate bookmakers licensed in the Northern Territory) to advertise their service in both states. As a result there are no restrictions enforced to prevent bookmakers licensed in one jurisdiction from advertising their wagering services to customers in other jurisdictions over the internet or telephone.
- 19 By July 2010, the wagering turnover of corporate bookmakers (excluding Luxbet which is a corporate bookmaker wholly owned by Tabcorp) had grown to approximately 25% of the total wagering industry.
- 20 By 2013, several foreign owned corporate bookmakers had entered the Australian wagering market:
- (a) in 2009, Paddy Power, an Irish listed betting company, acquired a majority stake in Sportsbet, before acquiring the remainder of the company in 2010;

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- (b) in 2013, William Hill, a bookmaker based in the United Kingdom and listed on the London Stock Exchange, acquired Sportingbet (which had acquired Centrebet in 2011) and Tom Waterhouse N.T. Pty Limited (which had been established in 2010); and
- (c) in 2013, Ladbrokes (now Ladbrokes Coral following a merger between Ladbrokes and Gala Coral in November 2016), a bookmaker and gaming company based in the United Kingdom and listed on the London Stock Exchange, acquired bookmaker.com.au.
- 21 In 2014, CrownBet was established through a joint venture between Crown Resorts Limited and BetEzy (which had been acquired by the former CEO of Sportsbet after the expiry of his non-compete clause following the Paddy Power acquisition).
- 22 The vast majority of corporate bookmakers in Australia are registered in the Northern Territory. At **Tab 6 of DF-1 [TBP.001.027.6263]** is a list from the Northern Territory Racing Commission's website of the sports bookmakers and betting exchange operators registered in the Northern Territory. The list includes corporate bookmakers such as Bet365, Betchoice / Unibet, Betting Club, CrownBet, Ladbrokes, Luxbet, Sportsbetting.com.au, Sportsbet, TopBetta and William Hill. It also includes Betfair (a betting exchange). Tabcorp is aware of at least seven corporate bookmakers registered in other jurisdictions within Australia. The three largest corporate bookmakers by turnover (being Sportsbet, William Hill and Ladbrokes) are licensed in the Northern Territory. At **Tab 1 of DF-3 [TBP.003.001.0725]** at **[.0832]** is a Tabcorp board paper dated 14 September 2016 (**Tabcorp's September 2016 Board Paper**) which details the rise in corporate bookmaker turnover since 2006. The paper notes at **[.0748]** that corporate bookmakers have doubled their turnover over the past 5 years and now command more than \$12 billion in national turnover, representing approximately 40% of the wagering market.
- B.2. Wagering suppliers**
- 23 Broadly speaking, wagering suppliers in Australia can be divided into three types: State TABs, bookmakers and Betfair.
- 24 **State TABs:** State TABs are state or territory licensed wagering operators that provide totalisator or 'pari-mutuel' wagering through the pooling of bets within a given state or territory. The current State TABs in Australia are Tabcorp, Tatts Group Limited (**Tatts**) and the WA TAB (operated by RWWA). The term 'totalisator' may refer to a method of wagering (as described in section B.5 below) or the wagering operator that provides

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totalisator/pari-mutuel wagering services to customers (for example Tabcorp, Tatts or RWWA). The terms 'TAB' or 'tote' may also be used to refer to totalisator operators, and 'TAB' is used specifically by Tabcorp in branding its services. In this statement, I use 'totalisator' or 'tote' to refer to the method of wagering, and 'State TABs' to refer to the wagering operators that provide totalisator wagering services.

- 25 State TABs must hold a licence from the relevant state or territory to provide totalisator products. Pursuant to the legislative structure that underpins the state-based wagering licence system, State TABs are currently the sole providers of wagering in a retail environment, by which I mean that they are the only entities licensed (in their respective states and territories) to accept cash bets in off-course retail venues. Retail venues include dedicated retail shopfronts (such as TAB agencies) and licensed premises (such as hotels, pubs, clubs, live sites, stadiums and newsagencies) with operator assisted and self-service terminals.
- 26 While State TABs were initially restricted to providing totalisator wagering services on racing, all State TABs in Australia are now able to, and do, provide fixed odds wagering services on racing and sport as well as novelty events and entertainment. As I explain below, each state and territory has different events or classes of events that are approved for betting.
- 27 **Bookmakers:** bookmakers provide derivative pari-mutuel (often referred to as 'tote derivative' or 'synthetic tote') wagering products and fixed odds wagering products. I describe these forms of wagering further in section B.6 and B.7 below. Bookmakers in Australia include:
- (a) **Corporate bookmakers:** corporate bookmakers are fully incorporated bookmakers that offer wagering services online and by telephone. The vast majority of the corporate bookmakers currently operating in Australia are licensed in the Northern Territory due to that jurisdiction's favourable licensing conditions and regulatory environment. No corporate bookmaker is currently licensed to accept bets for cash in off-course retail venues, however as I describe below, corporate bookmakers do accept bets from customers who are in State TAB retail venues via the internet and by telephone.
 - (b) **On-course traditional bookmakers:** traditional bookmakers are generally sole traders or small family businesses. They are permitted to operate face-to-face as well as over the phone and internet, while 'on-course' at a racing venue. Traditional bookmakers offer fixed odds products and tend to provide simpler

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products such as 'win' and 'place' bets. The number of registered traditional bookmakers operating in Australia has declined. For example in 1954, the number of traditional bookmakers in Victoria peaked at 1500 and is currently estimated to be approximately 169. A copy of the Victorian Bookmakers' Association webpage which refers to these figures is at **Tab 7 of DF-1 [TBP.001.018.4167]**.

- 28 **Betting exchange:** a betting exchange allows customers to wager directly against each other at fixed odds. One customer essentially acts as a bookmaker (by setting the odds for an event), with the other customer wagering using the odds set by the first customer. Any customer of a betting exchange can effectively act as an unlicensed bookmaker without being subject to the usual regulatory requirements of a licensed bookmaker. Betfair (whose Australian business is owned by Crown Resorts Ltd) operates the only licensed betting exchange currently operating in Australia. It is licensed in the Northern Territory, moving from Tasmania in 2016 after the Northern Territory Government amended legislation to allow for betting exchanges. Betfair matches bets on racing and sporting events in all Australian jurisdictions and across all codes and other events, such as wagering on the result of Eurovision or other entertainment.
- 29 Wagering suppliers may distribute wagering products through various channels:
- (a) **On-course:** 'on-course' refers to betting facilities located at a racing venue where a customer places a bet in person. State TABs and traditional bookmakers operate cash-based betting on-course. In Victoria, a corporate bookmaker can apply to conduct betting on-course, as a 'registered bookmaker', although generally on-course bookmakers in most Australian jurisdictions are limited to individuals.
 - (b) **Retail:** retail wagering involves bets placed by customers in authorised off-course retail venues outside a racing venue as described above in paragraph 25.
 - (c) **Online:** bets are placed by customers online through a wagering operator's website or mobile apps. State TABs, corporate bookmakers, traditional bookmakers and Betfair all operate online.
 - (d) **Telephone:** bets are placed by customers over the telephone. State TABs, corporate bookmakers, traditional bookmakers and Betfair all operate call centres that allow customers to place bets over the telephone.
- 30 While State TABs can operate both 'on-course' and through retail venues located 'off-course', the large majority of State TAB turnover in Australia is off-course. For example,

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between 1 August 2015 – 31 July 2016, the Victorian thoroughbred wagering turnover for on-course State TAB wagering was \$137.47 million whereas the same turnover for off-course State TAB wagering on Victorian thoroughbreds was \$1.013 billion. A copy of the Australian Racing Fact Book for this period which records these figures is at **Tab 8** of **DF-1 [TBP.015.001.1591]** at **[.1654]**.

- 31 I set out at **Figure 1** below a table which summarises the suppliers of wagering products in Australia, the wagering products each supplier is permitted to supply (and does in fact supply)¹ and the channels by which those products are supplied. I discuss the different types of wagering products in section B.4 - B.8 below.

Wagering supplier	Products supplied	Channels
State TABs	Totalisator products Fixed odds products Trackside (Tabcorp)	On-course (cash and account) Retail (cash and account) Online (account) Telephone (account)
Traditional bookmakers	Fixed odds products	On-course (cash) Online (account) Telephone (account)
Corporate bookmakers	Fixed odds products Tote derivative products	Online (account) Telephone (account)
Betfair	Fixed odds products Betting exchange products	Online (account) Telephone (account)

Figure 1: Products and channels provided by wagering suppliers in Australia

B.3. Market share of wagering suppliers

- 32 Market practice generally measures market share based on turnover. In this statement, where I refer to a wagering operator's 'turnover', I am referring to the total amount staked by customers with that operator. Where I refer to a wagering operator's 'revenue', I am referring to turnover after deducting payments to successful customers.
- 33 I set out below at **Figure 2** a graph showing the growth in corporate bookmakers' (and in this case, also Betfair's) market share on a turnover basis for the period FY06 to FY15 (taken from a copy of Tabcorp's September 2016 Board Paper which records these figures at **Tab 1** of **DF-3 [TBP.003.001.0725]** at **[.0755]**). I also set out below **Figure 3**

¹ For example, in Victoria, Tabcorp is permitted to supply a Betting Exchange and to offer tote derivative products under the Victorian Wagering and Betting Licence but does not supply those products.

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and **Figure 4** which depict the wagering turnover and revenue of wagering operators in the period FY12 – FY16 and **Figure 5** and **Figure 6** which show the market share of wagering turnover and revenue for those operators during the same period. **Figures 3 - 6** have been prepared by Tabcorp based on the following:

- (a) Tabcorp: Tabcorp's internal books and records, comprising domestic wagering only and including Tabcorp's 50% share arising from its Victorian joint venture;
- (b) Tatts: material obtained by Tabcorp from Tatts as part of the merger due diligence process and annual reports, excluding international entries relating to its Norfolk Island licence and assuming that Norfolk Island volumes for FY12 to FY15 are similar to the known value for FY16;
- (c) RWWA: Racing Australia Fact Book and annual reports;
- (d) Paddy Power, William Hill and Ladbrokes: annual reports;
- (e) CrownBet: media articles and yield rate assumption;
- (f) Bet365: Australian Securities and Investments Commission documents reported in media articles and yield rate assumption;
- (g) Betfair: Tabcorp's estimates;
- (h) Others: estimates by reference to balancing items for turnover and yield rate assumption (based on the Australian Gambling Statistics report at **Tab 9 of DF-1 [TBP.014.001.2483]**); and
- (i) Total: Racing Australia Fact Books.

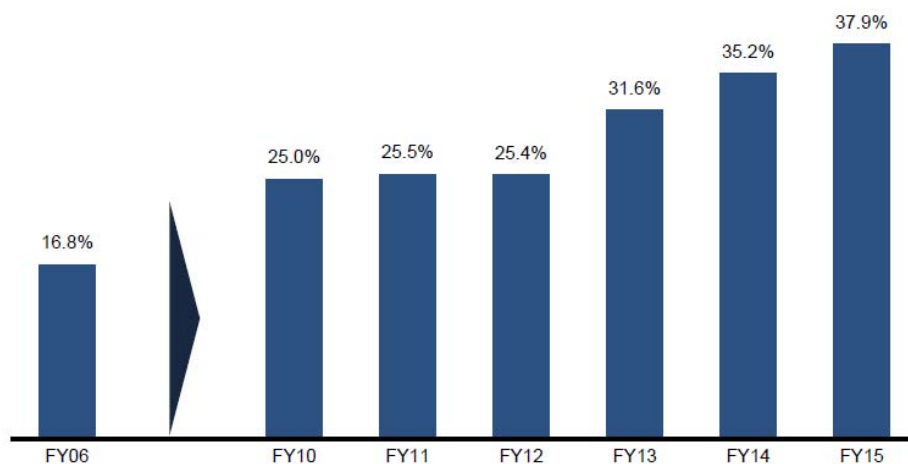


Figure 2: Wagering turnover market share – corporate bookmakers (excluding Luxbet) and Betfair (FY06 – FY15)

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	Turnover				
	FY12	FY13	FY14	FY15	FY16
Tabcorp*	██████	██████	██████	██████	██████
Tatts	██████	██████	██████	██████	██████
RWWA	1,966.5	2,120.2	2,198.7	2,165.9	2,149.5
ACTTAB	172.4	164.8	166.3	52.3	
ToteTAS	884.3				
Paddy Power (Sportsbet)	1,936.1	2,373.1	2,799.1	3,539.9	4,392.4
William Hill	2,539.6	2,533.3	2,536.9	2,234.6	2,179.6
Ladbrokes		637.5	808.5	1,182.0	1,862.5
Crownbet				498.4	1,744.4
Bet365		299.5	730.5	1,238.8	1,427.2
Betfair	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0
Others	1,772.7	2,505.7	2,434.7	2,164.8	1,575.7
Total	██████	██████	██████	██████	██████
<i>Market Growth</i>		██████	██████	██████	██████

**includes Luxbet and excludes turnover from PGI which is based offshore*

Figure 3: Wagering turnover of wagering operators for FY12 – FY16 (by \$million)

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	Revenue				
	FY12	FY13	FY14	FY15	FY16
Tabcorp*	██████	██████	██████	██████	██████
Tatts	██████	██████	██████	██████	██████
RWWA	293.1	315.7	339.5	335.7	330.2
ACTTAB	28.5	27.3	27.0	7.9	
ToteTAS	146.8				

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Paddy Power (Sportsbet)	165.6	221.6	281.9	402.3	472.4
William Hill	164.0	188.2	203.7	218.2	188.2
Ladbrokes		21.5	38.9	87.6	128.5
Crownbet				44.9	157.0
Bet365		15.0	36.5	61.9	71.4
Betfair	37.5	45.0	45.0	45.0	45.0
Others	141.8	200.5	194.8	194.8	141.8
Total	████	████	████	████	████
<i>Market Growth</i>		██	██	██	██
<i>*includes Luxbet and excludes turnover from PGI which is based offshore</i>					

Figure 4: Wagering revenue by wagering operator for FY12 – FY16 (by \$million)

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	Market share of turnover				
	FY12	FY13	FY14	FY15	FY16
Tabcorp	██	██	██	██	██
Tatts	██	██	██	██	██
RWWA	██	██	██	██	██
ACTTAB	██	██	██	██	██
ToteTAS	██	██	██	██	██
Paddy Power (Sportsbet)	██	██	██	██	██
William Hill	██	██	██	██	██
Ladbrokes	██	██	██	██	██
Crownbet	██	██	██	██	██
Bet365	██	██	██	██	██
Betfair	██	██	██	██	██
Others	██	██	██	██	██
Total	100%	100%	100%	100%	100%

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Figure 5: Market share of wagering turnover by wagering operator for FY12 – FY16

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	Market share of revenue				
	FY12	FY13	FY14	FY15	FY16
Tabcorp	■	■	■	■	■
Tatts	■	■	■	■	■
RWWA	■	■	■	■	■
ACTTAB	■	■	■	■	■
ToteTAS	■	■	■	■	■
Paddy Power (Sportsbet)	■	■	■	■	■
William Hill	■	■	■	■	■
Ladbrokes	■	■	■	■	■
Crownbet	■	■	■	■	■
Bet365	■	■	■	■	■
Betfair	■	■	■	■	■
Others	■	■	■	■	■
Total	100%	100%	100%	100%	100%

Figure 6: Market share of wagering revenue by wagering operator for FY12 – FY16

- 34 **Figure 7** below sets out the total wagering turnover for each state and territory for FY15 based on the Australian Racing Fact Book 2014 – 2015 and Tabcorp estimates. This is based on where the wagering operator is licensed, which may not necessarily be where the wagering takes place (particularly in the case of the Northern Territory).

State	Turnover (million)
Northern Territory	\$9,847
New South Wales	\$6,267
Victoria	\$4,972
Queensland	\$2,352
Western Australia	\$2,194

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South Australia	\$758
Tasmania	\$380
Australian Capital Territory	\$175

Figure 7: Total wagering turnover by state and territory (2014 – 2015) (including turnover from corporate bookmakers)

B.4. Wagering products

35 In Australia there are four distinct forms of wagering, often referred to as wagering 'products':

- (a) totalisator wagering (a form of pari-mutuel wagering);
- (b) tote derivative wagering;
- (c) fixed odds wagering; and
- (d) wagering through a betting exchange.

36 I describe each of these wagering forms in section B.5 to B.8 respectively below. Tabcorp also offers a product called Trackside, a computer simulated racing game which allows wagers to be placed on simulated races, which I describe in section C.7 below.

B.5. Totalisator wagering

37 Totalisator wagering is a pari-mutuel system of betting. In totalisator wagering:

- (a) the operator 'pools' all wagers ('turnover') on a particular event (for example a horse race) that have the same bet type (for example, a win bet, quinella or trifecta);
- (b) the operator then deducts from the pool a set percentage as commission (or 'take-out'); and
- (c) the remainder of the pool is distributed to customers as dividends in accordance with the outcome of the bets.

38 The anticipated dividend from a pari-mutuel pool is typically displayed to customers as 'indicative odds' when they place their bet. For example, the odds for a particular wager might be displayed as \$1.80, meaning that a \$1.00 bet would indicate a payout of \$1.80 if successful. The indicative odds change from time to time based on wagers made into the pool, from the time the pool opens (which is at the latest by 9:00am on the morning of the event) until the close of betting just prior to the start of the event. The influence of subsequent wagers is a function of the size of the pool and the size of the bet or

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selection as a percentage of the total pool. A small bet made into a large pool will have a small impact, however a large bet can significantly shift odds at any time. Large bets made close to the start of an event can significantly shift the indicative odds that have been published prior. The final odds are not calculated until after the close of betting on the relevant event and will often differ from the indicative odds shown at different times in the lead up to the race.

- 39 The amount a customer obtains (the 'dividend') is generally calculated by:
- (a) calculating the combined bets added up in the pool (including amounts from any pooling partners) net of cancelled bets;
 - (b) deducting an amount determined by the State TAB's take-out rate;
 - (c) dividing the relevant totalisator dividend pool by the number of winning units for successful customers; and
 - (d) taking into account the need to round the dividend payment amounts up or down. Any fractions which would otherwise form part of the dividend are generally retained by the State TABs.
- 40 The ultimate dividend paid to customers placing bets in pari-mutuel wagering is therefore contingent on how much money was invested into the pool, the number of winning units for successful customers and the rounding of dividend amounts. The totalisator operator has no financial interest in the outcome of the event on which pari-mutuel bets are placed because their revenue is derived from a commission rather than returns from bets placed against it. State TABs do not set the dividends for each customer and the dividends are effectively determined by the customers' bets in the pool. There is no risk to State TABs from pari-mutuel bets.
- 41 For racing totalisator bet types, if the correct combination is not chosen by any customer, the entire dividend pool will jackpot to the next race and bet type (for example, a trifecta) at the same meeting. However, if the jackpot is on the last race of a meeting, it will jackpot to another race at a future meeting. The jackpot pool will generally be carried over to a meeting of the same code. The pool will keep jackpotting until a winning combination is selected. Accordingly, Tabcorp does not retain any of the jackpotted pool (unless a winning non-account customer does not claim their dividends).
- 42 Legislation in each state and territory specifies the conditions under which a totalisator licence may be granted to a State TAB. Licensees are required to comply with a large

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number of conditions, obligations and restrictions, which vary between the states and territories including:

- (a) the payment of taxes and other fees to the state or territory government;
- (b) entry into arrangements with the relevant state or territory racing bodies, under which the licensee provides financial contributions to the racing industry and obtains approvals to conduct wagering activities including pooling with operators outside of the relevant state or territory;
- (c) requirements for the conduct of the TABs; and
- (d) the approval of and compliance with betting rules (for example, rules for contingencies such as when a horse is scratched).

43 Tabcorp's licensing obligations for each state and territory in which it operates the State TAB are described in more detail in section C.2 - C.4 below.

44 I set out below at **Figure 8** a table which shows the current State TABs in each state and territory.

State / Territory	Off-course State TABs	Parent company of TABs	Licence expiry	Pari-mutuel pools
New South Wales	TAB Limited	Tabcorp	2097 (exclusivity until 2033)	TAB Limited
Victoria	Tabcorp Wagering (Vic) Pty Ltd as the State TAB which has entered into a joint venture with Victorian Racing (Tabcorp Wagering Manager (Vic) Pty Ltd manages the joint venture operations and the SuperTAB pool)	Tabcorp	2024 (exclusive for term)	SuperTAB
Australian Capital Territory	Tabcorp ACT Pty Ltd	Tabcorp	2064 (exclusive for term)	
Western Australia	Racing and Wagering Western Australia (RWWA)	Government authority	N/A (exclusive)	SuperTAB (under Pooling Services Agreement with Tabcorp)
Queensland	UBET Qld Ltd – operates the	Tatts	2098 (exclusivity)	UBET

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State / Territory	Off-course State TABs	Parent company of TABs	Licence expiry	Pari-mutuel pools
	UBET pool		until 2044)	
South Australia	UBET SA Pty Ltd	Tatts	2100 (exclusivity until 2017)	
Tasmania	UBET Tas Pty Ltd	Tatts	2062 (option to renew to 2111 and exclusivity until 2027)	
Northern Territory	UBET NT Pty Ltd	Tatts	2035 (exclusive for term)	

Figure 8: Totalisator operators by state and territory

B.6. Tote derivative wagering

- 45 Although no corporate bookmaker presently offers a traditional totalisator product in Australia, corporate bookmakers (including William Hill, Bet365, Sportsbet, CrownBet, Unibet and Ladbrokes) offer 'tote derivative' or 'tote-odds' wagering products. In tote derivative products or 'tote odds' products, the odds are set by reference to the final totalisator dividend paid by one or more State TABs. This is a way in which corporate bookmakers can offer odds equal to, or better than, those offered by State TABs.
- 46 In tote derivative wagering, the odds are set by reference to the final dividend of one or more State TABs for the corresponding event. This allows a corporate bookmaker to, in effect, offer the same or better odds and betting products as State TABs without running its own pool.
- 47 Compared to the State TABs, corporate bookmakers can offer innovative variations on a tote product that a State TAB is unable to offer. For example, a corporate bookmaker may offer a 'best of totes' bet where the customer is offered the best dividend declared from the three Australian pools (SuperTAB, NSWTAB or UBET). For example, if a customer successfully places a bet, and the dividend declared from SuperTAB is \$1.80, NSWTAB is \$1.60 and UBET is \$1.40, the customer receives a dividend of \$1.80, being the best dividend declared of the three pools. Another such product is where the odds offered are those of the contestant's 'home tote' (the tote in their state or territory) plus 5%.
- 48 Corporate bookmakers can also offer greater promotions around the tote derivative product. For example, they can offer to refund the wager if the customer's chosen horse

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runs second and they can provide rebates and/or discounts for high value customers. As I explain in more detail below, corporate bookmakers are able to provide higher dividends to customers because they have a lower cost base.

- 49 Tote derivative wagering is offered by all Australian corporate bookmakers. State TABs do not offer tote derivative wagering services.
- 50 The corporate bookmakers are exposed to some risk in providing tote derivative products but they can mitigate that risk by 'betting back' into the totalisator pool (that is, by making equivalent bets with a State TAB to reduce the extent of their exposure to particular outcomes) or by 'laying-off' that risk with other corporate bookmakers (that is, bets are placed with another wagering operator so as to spread the risk of loss). Corporate bookmakers will select the most appropriate option after considering several factors such as the magnitude of the risk they are seeking to mitigate, the likelihood of being able to 'lay-off' all or part of that risk through a particular channel and the returns on offer by other wagering operators. If a corporate bookmaker offers tote derivative products and then bets back through a State TAB, and rebates are paid to that bookmaker from the State TAB, it is possible for that bookmaker to make a profit on those wagers without assuming any risk or any measure of risk proportionate to their possible profit. Further, with scale, risk decreases. Assuming a balanced book, the larger the book size, the smaller the risk.
- 51 In providing a direct alternative to pari-mutuel betting, the corporate bookmakers have a distinct competitive advantage over State TABs in that they can effectively re-sell the pari-mutuel products but from a much lower cost base. Their cost base is lower for a number of reasons including because they do not incur the State TAB operating costs and because they pay less tax and contribute less funding to the racing industry than State TABs. This is why corporate bookmakers can offer better odds for a derivative product than State TABs can for the underlying product itself.
- 52 There are several key features to the tote derivative products which enable them to effectively compete against the traditional tote products, particularly with respect to odds:
- (a) **Better odds for the customer:** as mentioned above, corporate bookmakers will often offer 'tote price plus 5%', or 'best of 3'. The customer is therefore guaranteed better odds for the tote derivative product compared to the equivalent totalisator product leading to a larger dividend (if successful);
 - (b) **Higher margins:** corporate bookmakers have the opportunity to obtain higher margins and maintain lower overheads compared to State TABs. In particular,

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corporate bookmakers do not incur the costs of operating a complex totalisator pool or the costs associated with the state or territory wagering licence held by the State TABs. In this sense, corporate bookmakers benefit from the totalisator pools operated by State TABs without contributing to the cost. Corporate bookmakers also pay lower wagering tax rates and lower product fees and contribute significantly less to the racing industry than State TABs. With tote derivative bet types, corporate bookmakers also do not incur the costs associated with generating their own fixed odds by 'framing a market', being the process undertaken by wagering operators to generate the odds they will offer to customers on the different outcomes of a particular event. This process is undertaken in order to ensure that the wagering operator's books are balanced such that a profit can be made, regardless of the outcome of the event and is described further below in paragraph 54;

- (c) **Greater product promotions:** as mentioned above, corporate bookmakers can and do advertise greater promotional offers around the tote derivative product (and their fixed odds products) compared to State TABs in both size and volume; and
- (d) **Ability to advertise:** corporate bookmakers are able to advertise their products across all states and territories, including to compete directly with the State TABs' offering in each jurisdiction, and tote derivative betting dominates corporate bookmakers' advertising and marketing materials. Corporate bookmakers also have a greater capacity than State TABs to advertise given their larger operating margins. At **Tab 1 of DF-2 [TBP.014.001.2018]** is a Monthly Competitive report from June 2016 prepared for Tabcorp by OMD, ClemengerBBDO and Atomic 212 (**June 2016 Competitive Report**) which sets out the comparative advertising spend of Tabcorp, Tatts and corporate bookmakers.

B.7. Fixed odds wagering

53 In contrast to pari-mutuel wagering and tote derivative wagering, in fixed odds wagering the customer is informed of the odds at the time their bet is placed. The odds accepted by the customer on that bet are fixed at the time and do not change, regardless of developments or betting patterns after the bet is placed (unless there is a scratching in which case there may be a reduction of the odds in accordance with the relevant betting rules).

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- 54 Customers who bet on the same outcome at different times will not necessarily receive the same odds. This is because the wagering operator actively adjusts the odds offered over time based on the quantities wagered on each outcome. The odds offered to the market are determined by the wagering operator's targeted yield (or 'market percentage') and an assessment of the probability of the relevant outcomes. In this way, the wagering operator can calibrate the odds to maintain a balanced book with a view to ensuring a profit, regardless of the outcome of the race or event. Theoretically a market percentage of 100% will not yield any profit to the wagering operator. The lower the operator's market percentage, the more favourable the odds offered to the customer and the more risk borne by the operator.
- 55 In fixed odds wagering, the operator's revenue is not a set commission, but instead depends on factors including:
- (a) the outcome of the event;
 - (b) the quantity and odds of the bets accepted by the wagering operator;
 - (c) the management of the book of bets;
 - (d) the extent to which the wagering operator's risk is 'bet-back' or 'laid off' (that is, the operator places bets with another wagering operator to mitigate or spread risk); and
 - (e) the risk appetite of the wagering operator.
- 56 Unlike totalisator wagering, which involves customers betting against each other, fixed odds wagering involves customers wagering against the wagering operator. As a result, fixed odds wagering involves more risk for the operator compared to totalisator wagering.
- 57 The suppliers of fixed odds wagering products in Australia include:
- (a) corporate bookmakers;
 - (b) State TABs;
 - (c) on-course bookmakers; and
 - (d) Betfair.
- 58 While State TABs were originally confined to providing pari-mutuel wagering products for racing, sporting and other events, legislative amendments have allowed them to expand their operations to provide fixed odds wagering on all racing and approved sporting and other events in all states and Trackside in states where Tabcorp is the State TAB.

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Tabcorp and Tatts each employ a number of risk management staff to manage their fixed odds book. WA TAB does so through an arrangement between RWWA and William Hill, a corporate bookmaker which operates WA TAB's fixed odds book on behalf of the WA TAB. RWWA sells the fixed odds products whilst William Hill manages the odds through the operation of a separate book (which may not necessarily set the same odds as William Hill's own book).

- 59 Separately to Luxbet, Tabcorp's wholly owned Northern Territory licensed corporate bookmaker, Tabcorp provides fixed odds wagering services in Victoria, New South Wales and the Australian Capital Territory on racing, sports and other events. Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**) (in Victoria), TAB Limited (in New South Wales) and Tabcorp ACT Pty Ltd (**Tabcorp ACT**) (in the Australian Capital Territory) operate their fixed odds wagering services through a single fixed odds book and a single risk management system. Accordingly, subject to regulatory approvals regarding permitted wagering events, Tabcorp Wagering Manager's customers, TAB Limited's customers and Tabcorp ACT's customers can bet on the same racing, sporting and other events and be offered the same fixed odds (subject to fluctuations in the odds offered from time to time).
- 60 The other major providers of fixed odds wagering products in Australia are corporate bookmakers such as William Hill, Bet365, Sportsbet, CrownBet, Unibet and Ladbrokes. The large majority of major corporate bookmakers are licensed in the Northern Territory and offer their fixed odds products online to customers in all states and territories in Australia. Accordingly, the most relevant regulatory framework for corporate bookmakers' provision of fixed odds wagering is that of the Northern Territory.
- 61 Fixed odds and tote derivative wagering products have increased in the share of the Australian wagering market both as a percentage of total wagering and in absolute terms, whilst pari-mutuel wagering has declined. As I explain in further detail in section G.3 below, this shift is partly due to the growth of corporate bookmakers that provide fixed odds wagering products and that are, in many instances, backed by large international parent companies.

B.8. Betting exchanges

- 62 Betting exchanges match a customer's bet with a directly opposing bet (or bets). When a customer places a 'back bet', they are betting on a certain outcome to occur (for example, that a particular horse will win the race). When a customer places a 'lay bet', they are betting on an outcome to not occur (for example, that a particular horse will not

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win the race). Bets are only placed when they are matched. In other words, there needs to be both a back bet and a lay bet, at agreed odds and bet size. For example, a bet placed that a certain horse will win at specified odds (a back bet) will only be accepted by a betting exchange in circumstances in which another customer (or combination of customers) has placed a bet that the horse will lose at the specified odds (a lay bet). One customer essentially acts as an unlicensed bookmaker by setting the odds for the particular event they wish to bet on. Another customer then places a bet using the odds set by the former customer.

- 63 A customer can place either a back bet or a lay bet on a betting exchange. This differs from State TABs and bookmakers which only allow customers to place back bets. As with a State TAB, the corporate entity running the betting exchange takes no risk on any of the bets. The betting exchange generates revenue by taking a commission on a customer's net winnings. As mentioned above, Betfair (owned by Crown Resorts Ltd in Australia) is the only licensed betting exchange currently operating in Australia.

B.9. Wagering events

- 64 Wagering customers in Australia can place bets on racing, sports and other events:

- (a) **Racing:** includes the three codes of racing in the 'racing industry':
 - i thoroughbred racing (horses);
 - ii harness racing (horses); and
 - iii greyhound racing (dogs);
- (b) **Sports:** includes other sports events that do not fall within racing; and
- (c) **Other events:** include novelty events, such as wagering on the result of the Academy Awards or other entertainment.

- 65 The majority of wagering turnover is on racing. Total racing wagering turnover in Australia for the period between 1 August 2015 to 31 July 2016 was \$20.641 billion. Total sports betting turnover for the same period was \$8.243 billion (**Tab 8 of DF-1 [TBP.015.001.1591] at [.1659]**).

- 66 The wagering events that may be offered are restricted by the terms of the relevant wagering operator's licensing conditions. State TABs are restricted in the wagering products they can provide to customers to products listed in the 'product schedule' of the relevant state or territory and the permitted products differ across jurisdictions. For example, in Victoria, Tabcorp is not currently permitted to offer Ultimate Fighting

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Championship (**UFC**) products but is permitted to offer wagering on Australian politics (unlike New South Wales). Further, a corporate bookmaker licensed in the Northern Territory is permitted to offer wagering on the movement of the employment rate whereas this is not a permitted wagering event in New South Wales, Victoria and the Australian Capital Territory.

67 At **Tab 10** of **DF-1 [TBP.014.001.5970]** is a copy of the Northern Territory Racing Commission's list of declared sporting events and other declared betting events that the corporate bookmakers are authorised to take bets on in the Northern Territory. At **Tab 11** of **DF-1 [TBP.014.001.1057]** is a copy of the list of events that Tabcorp's Victorian and New South Wales businesses are authorised to take bets on in Victoria and New South Wales respectively.

B.10. Bet types

68 A variety of bet types are offered by Australian wagering operators. I set out at **Tab 12** of **DF-1 [TBP.001.027.1737]** a list which sets out the bet types and products offered by Tabcorp, Tatts and corporate bookmakers in Australia.

69 Most totalisator wagering is conducted on racing events, although Tabcorp has a small FootyTAB totalisator offering. Examples of the types of racing totalisator bet types offered by Tabcorp (and the other State TABs) in Australia include:

- (a) **Win:** the customer picks the runner which finishes first;
- (b) **Place:** the customer picks the runner which finishes first, second or third;
- (c) **Quinella:** the customer picks the runners which finish first and second, in any order;
- (d) **Exacta:** the customer picks the runners which finish first and second, in the correct order;
- (e) **Trifecta:** the customer picks the runners which finish first, second and third, in the correct order;
- (f) **First 4:** the customer picks the runners which finish first, second, third and fourth in the correct order;
- (g) **Big 6:** the customer picks the winners of 6 TAB nominated races;
- (h) **Daily double:** the customer picks the winners of two TAB nominated races;
- (i) **Extra double:** the customer picks the winners of two different races (to the Daily Double) at any one meeting;

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- (j) **Running double:** the customer picks the winner of two consecutive races at any one meeting;
 - (k) **Quaddie:** the customer picks the winners of four TAB nominated races; and
 - (l) **Duet:** the customer picks two of the first three runners.
- 70 The pari-mutuel bet types available from Tabcorp on FootyTAB are:
- (a) **Winners:** the customer picks the winning team in every game played during a designated National Rugby League (**NRL**) round;
 - (b) **Margins:** the customer picks the winning team and by what margin they will win for every game played during an NRL round; and
 - (c) **Score:** the customer picks the number of points each team will score in a designated match.
- 71 Examples of tote derivative bet types offered by corporate bookmakers in Australia include:
- (a) **Top tote / best tote:** whereby customers are offered the highest dividend, based on the closing odds, of the three State TAB pools (SuperTAB, NSWTAB and UBET). Customers may receive higher dividends than betting through a State TAB in circumstances where they only receive dividends on the single State TAB in which they are betting;
 - (b) **Top tote plus / best tote plus:** whereby customers are offered the highest dividend paid of the three State TABs or the Starting Price, whichever is higher. The Starting Price is the official and final on-course bookmakers' price transmitted at the advertised start of the race, usually by the Australian Prices Network, an entity jointly owned by the five metropolitan racing clubs of Sydney and Melbourne. This allows customers to receive both the best of the three State TABs or the best of the Starting Price on those State TABs;
 - (c) **Mid tote:** whereby customers are offered the middle dividend of the three State TAB pools. This is often offered on midweek races;
 - (d) **Top tote plus x%:** whereby customers are offered the top State TAB dividend plus a predetermined percentage bonus. The bonus is usually between 5% and 20%; and
 - (e) **Best of the best:** whereby customers are offered the highest payout dividend of the best of the three State TAB pools or the Top Fluc, whichever is higher. The

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Top Fluc or “Top Fluctuation” is the highest official on-course bookmaker’s odds. Corporate bookmakers selling this product generally use the Australian Prices Network for the Top Fluc component and often require bets to be made at least 30 to 45 minutes before the start of a race.

- 72 At **Tabs 13 to 19 of DF-1 [TBP.015.001.3724], [TBP.015.001.4846], [TBP.015.001.5186], [TBP.015.001.1688], [TBP.015.001.1674], [TBP.015.001.1684]** and **[TBP.015.001.1818]** are copies of print outs from the websites of various corporate bookmakers which refer to their tote derivative wagering products.
- 73 There are a variety of fixed odds bet types, including:
- (a) **Win:** whereby the customer picks the runner which finishes first;
 - (b) **Place:** whereby the customer picks the runner which finishes first, second or third; and
 - (c) **Multi bets:** whereby the customer correctly places bets across multiple racing, sports and other betting options and the dividend is calculated by multiplying the odds of each selection together.
- 74 In each state and territory in which Tabcorp operates, regulatory approval is required to offer a new pari-mutuel bet type. The steps involved in launching a new pari-mutuel bet type includes updating information technology and point of sale systems, producing new betting tickets, marketing and preparing for product launches and drafting and obtaining approval for new betting rules. As a result of these steps, launching a new pari-mutuel bet type currently costs a significant amount of money (up to **[Confidential to Tabcorp]** per product). More critically, a State TAB needs sufficient liquidity in the pool to viably launch a new product. For these reasons Tabcorp has launched only two new pari-mutuel products in the last 10 years: the ‘early quaddie’ (whereby the customer picks the winners of four races early in the race meeting) and the ‘Big 6’ (whereby the customer picks the winners of 6 TAB nominated races).
- 75 By contrast, corporate bookmakers face fewer hurdles to introduce innovative tote derivative and fixed odds products. Examples of fixed odds products introduced in recent years include “first past the post” which is a promotional product whereby customers still receive their winnings if their selection is first past the finish but loses the race based on relegation or disqualification as a result of a protest.

Confidential Restriction on Publication Claimed**B.11. Relationship between State TABs and racing industry**

- 76 As described above, given the close historical ties between the development of State TABs and the racing industry and their interdependence on wagering turnover, it is my view that any State TAB's performance depends, in part, on the continued success of the racing industry. For that reason, in my current role, I am concerned to understand the drivers of the racing industry and the matters upon which its success depends.
- 77 In my opinion, a successful racing industry is created and sustained by providing good quality racing events through:
- (a) securing the best race entrants;
 - (b) providing a large field of entrants for each race;
 - (c) ensuring that the race track and facilities are kept in optimum condition;
 - (d) providing high quality supporting on-course entertainment;
 - (e) promoting the event;
 - (f) ensuring vision of the event on all available media; and
 - (g) optimising the amount of wagering on the event.
- 78 While one can speak in general terms of a 'racing industry', the industry itself comprises a series of complex relationships. The racing industry is divided on state and territory lines and within each state and territory it is divided into the three racing codes of thoroughbreds, harness and greyhounds (with the exception of the Northern Territory, which does not have harness racing). Within each of the three codes, there are often different interests as between metropolitan and country stakeholders. Other interested stakeholders include:
- (a) racing clubs – there are approximately 405 thoroughbred racing clubs, 116 harness racing clubs, and 67 greyhound racing clubs in Australia. The racing clubs, all of which are non-profit organisations, provide racing 'products' by organising and conducting race meetings;
 - (b) owners, trainers, jockeys and stewards;
 - (c) employees; and
 - (d) various aspects of other industries that rely upon the racing industry (such as tourism, entertainment, transportation, veterinarians, feed suppliers and food and beverage suppliers).

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79 Where a racing industry is able to secure a number of consistently good quality racing events, those racing events typically develop the prestige of that industry, which further encourages the participation and involvement of high calibre race entrants and racing industry personnel. In order to be in a position to put on a high quality event and secure prestige, the racing industry must be well funded so that it can afford to incentivise race entrants through high prize money, keep the track and facilities in good order, manage integrity, maintain animal welfare, provide entertainment and so on. The better funded the industry, the better quality and calibre of events it can afford to stage.

80 Where a racing event develops prestige, this tends to generate more public interest in the races, which in turn leads to:

- (a) higher attendances at the racing events (including by members of the public who are not necessarily interested in the racing but are attracted to the social and networking aspects of attending the races); and
- (b) an increase in wagering activity.

81 These factors increase the racing clubs' funding through:

- (a) ticket sales and associated costs;
- (b) wagering revenue; and
- (c) sponsorships,

which in turn enables the clubs to spend more money on maintaining and growing their industry.

82 While the sources of funding for the racing industry vary in each state and territory and across racing codes, in general the key sources of funding are:

- (a) the payments received from State TABs pursuant to wagering licence conditions and racing industry funding obligations;
- (b) the payments received from wagering operators pursuant to race field fees;
- (c) racing animal owners' contributions;
- (d) voluntary contributions, for example, from volunteers on racing club committees;
- (e) racing club memberships;
- (f) financiers to racing industry participants who fund investments in property by the larger breeders, trainers and owners;
- (g) governments;

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- (h) sponsors (primarily of racing club events);
- (i) expenditure by patrons attending race meetings;
- (j) sale of media rights; and
- (k) rental of race course facilities for non-racing events such as conferences.

83 State TABs in particular, and to a much lesser extent corporate bookmakers, provide a significant proportion of the racing industry's funding. This differs from wagering on other sporting events which are generally funded primarily through ticket sales, sponsorship and media rights. For example, the Australian Football League (**AFL**) derives the vast majority of its income from broadcasting. While racing provides around ten days each year that attract broad spectator interest, this is not a sufficient source of funding given more than 50,000 races are run over 363 days of the year which attract much less spectator and broadcasting interest. The racing industry therefore relies heavily on sources of funding outside of media interests, broadcasting and ticket sales, and in particular, financial contributions from wagering operators. The two largest racing industries in Australia are New South Wales and Victoria. A significant portion of their funding comes from their agreements with Tabcorp. In FY16 over 65% of Racing Victoria's wagering revenue was derived from distributions arising from its joint venture with Tabcorp (which I describe in further detail below). A copy of Racing Victoria's 2016 Annual Report from which this figure has been derived is at **Tab 20 of DF-1 [TBP.015.001.4429]**.

84 I set out below at **Figure 9**, a table which summarises the estimated value of the various payments made by Tabcorp, Luxbet, corporate bookmakers and Betfair in FY16 pursuant to racing industry funding obligations. This data shows that Tabcorp's and Luxbet's combined contribution to the racing industries in New South Wales, Victoria and the Australian Capital Territory represented approximately **[HIGHLY Confidential to Tabcorp]** [REDACTED] of the total racing industry funding derived from racing industry agreements and race field fees in those jurisdictions respectively (based on the FY16 annual reports of the relevant state-based racing industry bodies and internal Tabcorp management reports).

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State	Tabcorp racing industry agreement payments	Race fields fees			Total racing industry funding*	Tabcorp and Luxbet payment as % of total industry funding*
		Tabcorp	Luxbet	Other (corporate bookmakers, Tatts, RWWA, on-course bookmakers and Betfair)		
NSW	██████████	██████████	██████████	██████████	██████████	██
Victoria	██████████	██████████	██████████	██████████	██████████	██
ACT*	██████████	██████████	██████████	██████████	██████████	██
<p>Note that the race fields fees for other operators in the ACT includes estimates for ACT Harness and for growth from FY15 to FY16 for Canberra Greyhounds.</p> <p>* Racing industry funding being the funding derived from racing industry agreement payments and race field fees.</p>						

Figure 9: Racing industry contributions by type and wagering operator – FY16

- 85 The extent of the State TABs' racing industry funding contributions is primarily due to the terms of the state and territory wagering licences and the racing industry funding agreements with the racing industries in those jurisdictions. Tabcorp and Tatts together paid approximately \$1 billion to the racing industry in FY16 which was a combination of approximately \$787 million contributed by Tabcorp and approximately \$200 million contributed by Tatts. A copy of Tabcorp's Annual Report for FY16 showing these figures is attached at **Tab 21** of **DF-1 [TBP.011.001.0117]**. A copy of Tatts' Annual Report for FY16 showing these figures is attached at **Tab 22** of **DF-1 [TBP.011.001.1037]**.
- 86 Corporate bookmakers' financial contribution to the racing industry is primarily through the payment of race field fees (which are also paid by State TABs). Each state and territory in Australia has enacted legislation or regulations that establish a framework for race field arrangements, in which each state-based racing industry charges wagering operators product fees for use of that industry's race field information (or otherwise charges fees in respect of the operator's race betting operations in that state or territory). The fees payable vary across jurisdictions and codes and are calculated by reference to turnover, gross revenue, or a hybrid of both. Payments made under race field arrangements are significantly smaller in comparison to the payments made by Tabcorp under its licensing arrangements with state-based racing industries. Accordingly, corporate bookmakers' financial contribution to the racing industry through payment of race field fees is significantly smaller (as a proportion of their revenue) compared to the

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contributions made by Tabcorp which includes racing industry contributions in addition to race field fees. I set out below in section E further details of the financial contribution that have been made to the racing industry by Australian wagering operators.

87 In addition to providing key funding, Tabcorp supports the racing industry by providing subsidised wagering support services such as racing vision, audio, form (statistical information about the race participants) and other data through a range of distribution channels including retail and media outlets.

C. TABCORP'S WAGERING OPERATIONS**C.1. Overview**

88 Tabcorp's business is divided into three main business divisions corresponding to each of the principal sectors in which it operates:

- (a) wagering and media;
- (b) gaming services; and
- (c) Keno.

89 In this section C, I set out an overview of Tabcorp's wagering operations. Tabcorp's media operations are addressed in section D below.

90 The principal forms of wagering conducted by Tabcorp are wagering on racing (thoroughbred, harness and greyhound racing) and sports, although Tabcorp also offers wagering services on other events and simulated racing (through Trackside).

91 Tabcorp's Australian wagering business operations include:

- (a) totalisator and fixed odds wagering on racing and other sports in agencies and licensed venues (hotels, pubs, clubs and other venues) in Victoria, New South Wales and the Australian Capital Territory, and by telephone, apps and internet nationwide;
- (b) on-course totalisator and fixed odds wagering in Victoria, New South Wales and the Australian Capital Territory;
- (c) tote derivative and fixed odds betting on racing, sports and other events through its Northern Territory licensed bookmaker Luxbet; and
- (d) Trackside, which operates in retail venues in Victoria, New South Wales and the Australian Capital Territory and is licensed to Crown Casino in Perth.

92 Tabcorp's overseas wagering operations include:

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- (a) a partnership with United States-based Unikrn to provide wagering services for eSports gaming tournaments;
- (b) an agreement between Sky Racing World, LLC and eBet Technologies which provides wagering services pursuant to an advance deposit wagering licence in Oregon, United States;
- (c) the distribution of racing vision and data in the Americas through its wholly owned United States subsidiary Sky Racing World, LLC;
- (d) a joint venture with South Africa's Phumelela Gold International to operate PGI which is based in the Isle of Man and provides pari-mutuel wagering and wagering interface systems;
- (e) the operation of Sun Bets, an online fixed odds wagering and gaming business in the United Kingdom and Ireland, under an agreement with News UK;
- (f) pooling with international wagering operators (as described in section C.6 below); and
- (g) Trackside, which is licensed to a number of overseas jurisdictions including the United States, Denmark, Sri Lanka and Croatia.

93 Each Australian state and territory provides its own regulatory regime for wagering operators licensed to operate within its jurisdiction. These regimes regulate:

- (a) who may offer wagering services within the state or territory, and the circumstances in which those services can be supplied;
- (b) the maximum commission that State TABs can charge customers who place totalisator bets;
- (c) the taxes that State TABs and bookmakers must pay on wagering and gambling services;
- (d) the products that can be offered by wagering operators; and
- (e) the advertising of wagering services and products.

94 As a result, Tabcorp operates under separate wagering licences and regulatory regimes in Victoria, New South Wales, the Australian Capital Territory and the Northern Territory (through Luxbet). I set out below at **Figure 10**, a table which summarises Tabcorp's wagering operations and the legislative regimes in these jurisdictions. I provide further details in sections C.2 (Victoria), C.3 (New South Wales), C.4 (Australian Capital Territory) and C.5 (Northern Territory) below.

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State or territory	Tabcorp's wagering operations	Relevant legislation
Victoria	On-course totalisator and fixed odds wagering (cash and account) Totalisator and fixed odds wagering in retail (cash and account), online (account) and over the telephone (account) Hosting of SuperTAB pool Trackside	<i>Gambling Regulation Act 2003 (Vic)</i>
New South Wales	On-course totalisator and fixed odds wagering (cash and account) Totalisator and fixed odds wagering in retail (cash and account), online (account) and over the telephone (account) Hosting of NSW TAB pool Trackside	<i>Totalisator Act 1997 (NSW)</i> <i>Unlawful Gambling Act 1998 (NSW)</i> <i>Betting and Racing Act 1998 (NSW)</i>
Australian Capital Territory	On-course totalisator and fixed odds wagering (cash and account) Totalisator and fixed odds wagering in retail (cash and account), online (account) and over the telephone (account) Trackside	<i>Race and Sports Bookmaking Act 2001 (ACT)</i> <i>Totalisator Act 2014 (ACT)</i> <i>Lotteries Act 1964 (ACT)</i>
Northern Territory	Fixed odds wagering and tote derivative wagering through Luxbet (account only)	<i>Racing and Betting Act (NT)</i>

Figure 10: Tabcorp's wagering operations by state or territory

95 I have been asked to provide certain data for the period FY06 – FY16 on Tabcorp's pari-mutuel and fixed odds offerings, Trackside, Luxbet and pooling arrangements. At **Tabs 2 – 34** of **DF-3** are a series of spreadsheets containing data which includes:

- (a) **pari-mutuel wagering:** Tabcorp's daily revenue, turnover, commission and fractions earned from roundings for pari-mutuel wagering by jurisdiction, bet type and wagering channel (at **Tabs 2 – 20** of **DF-3** [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],

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[TBP.015.001.4257], [TBP.015.001.4258], [TBP.015.001.4259],
[TBP.015.001.4260], [TBP.015.001.4261], [TBP.015.001.4262]);

- (b) **fixed odds wagering:** Tabcorp's daily weighted turnover and weighted revenue for fixed odds wagering on sports and racing by jurisdiction, bet type and wagering channel (at **Tabs 21 – 26 of DF-3 [TBP.015.001.1838], [TBP.015.001.1839], [TBP.015.001.1840], [TBP.015.001.1841], [TBP.015.001.1842], [TBP.015.001.1843]**);
- (c) **Trackside:** Tabcorp's daily revenue and turnover for Trackside by jurisdiction, bet type and wagering channel (at **Tab 27 of DF-3 [TBP.015.001.5185]**);
- (d) **Luxbet:** Luxbet's daily revenue and turnover by bet type and category (at **Tabs 28 – 30 of DF-3 [TBP.015.001.3788], [TBP.015.001.3789], [TBP.015.001.3790]**); and
- (e) **pooling:** Tabcorp's daily net sales, fractions earned from roundings, commissions and revenue arising from its pooling arrangements by jurisdiction, bet ticket type and hosting state (at **Tabs 31 – 34 of DF-3 [TBP.015.001.4263], [TBP.015.001.4264], [TBP.015.001.4265], [TBP.015.001.4266]**).

Tab 2 of DF-2 [TBP.015.001.1826] provides an explanation of each of these spreadsheets. The reference to "New Media" in the "Sales Type Name" column in the daily turnover data spreadsheets refers to bets placed via the TAB Active service using a FOXTEL remote control with Tabcorp's Sky Channel. This service is no longer available. In the "Sales Type Name" column in the daily turnover data spreadsheets, the following categories are referable to online and phone betting: Internet, Mobile, New Media, Operator and Self Service.

96 I have also been asked to provide certain historical data on Tabcorp's launch dates for certain wagering operations including:

- (a) Tabcorp's launch dates for certain new pari-mutuel and fixed odds products, Trackside products and Loyalty program products;
- (b) the periods during which Tabcorp has previously offered limited promotions to customers (such as "Money Back" promotions if a customer's pick comes second or third in an event);
- (c) details of Tabcorp's pari-mutuel take-out rates; and
- (d) the commencement dates of Tabcorp's pooling arrangements with other totalisator operators.

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A document setting out this data is at **Tab 3** of **DF-2 [TBP.015.001.3737]**.

- 97 I have also been asked to provide certain data on Tabcorp's actual take-out rates for its totalisator wagering business. At **Tab 4** of **DF-2 [TBP.001.027.6619]** is a document setting out Tabcorp's actual average take out rates for various pari-mutuel bet types in New South Wales and Victoria from FY13 – FY15.

C.2. Tabcorp's Victorian wagering operations

- 98 Tabcorp Wagering (Vic) Pty Ltd (**Tabcorp Wagering**) is a wholly-owned subsidiary of Tabcorp. Tabcorp Wagering was awarded the sole available Victorian Wagering and Betting Licence under the *Gambling Regulation Act 2003* (Vic) in December 2011. The Victorian Wagering and Betting Licence commenced operation on 16 August 2012 for a period of 12 years (to August 2024), with an option on the part of the Victorian Government to extend for a further two years (to August 2026). A copy of the Victorian Wagering and Betting Licence is at **Tab 23** of **DF-1 [TBP.014.001.7873]**. The Victorian Wagering and Betting Licence replaced Tabcorp's previous wagering licence dated 28 June 1994 which was granted pursuant to the *Gaming and Betting Act 1994* (Vic). A copy of Tabcorp's Annual Report for 2011/2012 which refers to Tabcorp obtaining the Victorian Wagering and Betting Licence is at **Tab 24** of **DF-1 [TBP.011.001.0241]**.
- 99 Tabcorp Wagering was awarded the Victorian Wagering and Betting Licence following the Victorian Government issuing a notice in 2008 which called for registrations of interest in the grant of a wagering and betting licence. A copy of the notice is at **Tab 25** of **DF-1 [TBP.001.027.6454]**. The notice specified at page 14 that any company that could meet the requirements and criteria of the notice were invited to register their interest. This did not prevent foreign companies from applying. Tabcorp Wagering, Tatts and Ladbrokes plc registered their interest and were invited to apply for the Victorian Wagering and Betting Licence. Ladbrokes subsequently withdrew from the process in October 2010. At the time, it was reported that Ladbrokes withdrew due to process delays (as reported in a media article dated 22 November 2010 at **Tab 26** of **DF-1 [TBP.015.001.4842]**).
- 100 Under section 4.3A.7(2)(c) of the *Gambling Regulation Act 2003* (Vic), each applicant was required to satisfy the Minister of Gaming that it had made a binding offer to enter into arrangements with the Victorian racing industry, including in relation to funding, that were no less favourable than existing arrangements (such as those in place with Tabcorp under the previous wagering and betting licence). It was a further requirement of the bidding process that the licensee would agree to certain licence conditions and

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enter into an agreement with the State of Victoria. The contemplated details of those requirements are contained in the confidential Invitation to Apply for a Wagering and Betting Licence which was given to Tabcorp Wagering from the State of Victoria in July 2010. Further details of the bidding process is contained in the Report of the Review Panel to the Minister for Gaming in relation to Invitations to Apply for the Grant of a Wagering and Betting Licence dated July 2011 (at **Tab 27** of **DF-1 [TBP.015.001.4489]**) and the Report of the Review Panel to the Minister in Relation to Expressions of Interest in the Grant of Wagering and Betting Licence dated 28 July 2010 (at **Tab 28** of **DF-1 [TBP.015.001.4540]**).

- 101 The Victorian Wagering and Betting Licence allows Tabcorp Wagering to (amongst other things) conduct totalisator and approved betting competitions (that is, events or classes of events of any kind that have been approved for betting purposes by the Minister or the Victorian Commission for Gambling and Liquor Regulation) both off-course in agencies and licensed venues and on-course at racetracks, in relation to thoroughbred, harness and greyhound racing throughout Australia and internationally, other sporting events and some non-sporting events. The Victorian Wagering and Betting Licence also allows for online betting, the offering of approved simulated racing games (such as Trackside) and the operation of a betting exchange (although Tabcorp Wagering does not operate a betting exchange at this time).
- 102 As the sole licensee of the Victorian Wagering and Betting Licence, only Tabcorp Wagering, and the operator of its licence Tabcorp Wagering Manager, are able to offer totalisator and fixed odds wagering products in retail outlets in Victoria.
- 103 In Victoria, Tabcorp Wagering offers wagering products through:
- (a) approximately 731 retail outlets of which 92 are agencies and 639 are licensed venues comprising hotels, clubs, stadiums and kiosks;
 - (b) approximately **[Confidential to Tabcorp]** ██████████ active accounts (being an account that placed a bet in FY16)², all of which are able to be accessed via the telephone or the internet throughout Australia – that is, customers outside Victoria can bet with TAB Victoria. Customers can also bet on account through Tabcorp's self-service terminals;
 - (c) on-course betting facilities located at approximately 90 race tracks throughout Victoria;

² Some of these accounts may be frozen for various reasons (e.g. pending ID verification), but they are all classed as open accounts.

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- (d) an online portal (www.tab.com.au) which directs customers to TAB Victoria, TAB NSW or ACTTAB; and
 - (e) iPhone, iPad and Android apps.
- 104 Tabcorp's wagering activities in Victoria also include operating the SuperTAB totalisator pool. Several other totalisator operators, including WA TAB and various overseas wagering operators, co-mingle bets into the SuperTAB pool. ACTTAB (which Tabcorp acquired from the Australian Capital Territory Government in 2014) also pools into SuperTAB. Further information on the SuperTAB pool is at section C.6.ii below.
- 105 Tabcorp's Victorian wagering activities are conducted through a joint venture, originally formed on 25 May 1994 between the Victorian racing industry and Tabcorp (**Joint Venture**). The formation of the original Joint Venture coincided with the privatisation of the formerly state-owned Victorian TAB, the public float of Tabcorp and the issuing of the previous wagering and gaming licence by the Victorian Government.
- 106 The original unincorporated joint venture agreement dated 25 May 1994 was entered into between VicRacing Pty Ltd (**VicRacing**), Tabcorp, Tabcorp Participant Pty Ltd, Tabcorp Manager Pty Ltd and Tabcorp Assets Pty Ltd (**Former JVA**). VicRacing is an entity which represents the Victorian racing industry, comprising:
- (a) Racing Victoria Limited (which represents thoroughbred racing);
 - (b) Harness Racing Victoria; and
 - (c) Greyhound Racing Victoria.
- 107 The Former JVA entitled VicRacing to a 25% interest in the profits generated by Tabcorp's conduct of the gambling activities previously undertaken by the TAB. Tabcorp also entered into other agreements which enabled the principal Victorian racing bodies to receive further fees from Tabcorp's conduct of wagering activities previously undertaken by the TAB. As I describe below, under Tabcorp's current joint venture arrangements, VicRacing is now entitled to 50% profit from Tabcorp's Victorian wagering operations.
- 108 From 1994, pursuant to the *Gambling and Betting Act 1994*, off-course betting was prohibited in Victoria unless conducted by, or through, Tabcorp. At the same time, Tabcorp was obliged to make substantial payments to the Victorian racing industry pursuant to the Former JVA and the other agreements that it had made with the Victorian racing industry.

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- 109 On 19 December 2011, Tabcorp Wagering was issued with the sole Victorian Wagering and Betting Licence by the Victorian Government under the *Gaming Regulation Act 2003* (Vic) after a competitive tender process. Tabcorp Wagering and the State of Victoria entered into a Wagering and Betting Agreement on 19 December 2011 to facilitate the arrangements relating to the conduct of authorised betting competitions under the Victorian Wagering and Betting Licence. That agreement requires Tabcorp Wagering to facilitate any transition of the conduct of authorised betting competitions from Tabcorp Wagering to a new licensee and develop a transition plan to describe how such a transition would be undertaken. Tabcorp has provided the Victorian Commission for Gambling and Liquor Regulation a copy of its Wagering and Betting Licence Transition Plan as at 28 July 2016. On 21 December 2011, the current unincorporated joint venture agreement (the **current JVA**) was entered into between Tabcorp Wagering, Tabcorp Wagering (Participant) Pty Ltd, VicRacing Pty Ltd, Racing Products Victoria Pty Ltd, Tabcorp Wagering Assets (Vic) Pty Ltd and Tabcorp Wagering Manager. The current JVA was scheduled to the Victorian Wagering and Betting Licence (as required under clause 5.3(d)(i) of the Victorian Wagering and Betting Licence). Clause 5.3(e) of the Victorian Wagering and Betting Licence requires Tabcorp to enter into the current JVA (and other associated agreements) with VicRacing and Racing Products Victoria Pty Ltd, Tabcorp Wagering is required to comply with the terms of the current JVA.
- 110 The current JVA, which has been operative since August 2012, establishes the Joint Venture for:
- (a) the organisation, conduct, promotion and development of wagering, approved betting competitions and virtual racing activities in Victoria;
 - (b) the collection of money and receivables produced by or derived from the Joint Venture; and
 - (c) the distribution of money and receivables produced by or derived from the Joint Venture.
- 111 Tabcorp Wagering has also entered into certain other agreements with the Victorian racing industry including a Racing Information Agreement dated 21 December 2011 (**Racing Information Agreement**), Racing Program Agreement dated 21 December 2011 (**Racing Program Agreement**), PGI Premium Customer Agreement FY17 (**PGI Customer Agreement**) and Premium Customer Agreement FY17 (Aust)) (**Premium Customer Agreement**).

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- 112 Pursuant to these agreements and the current JVA, VicRacing is entitled to a 50% interest in the profits generated by Tabcorp Wagering's conduct of the joint venture, as well as certain other fees payable by Tabcorp Wagering to the Victorian racing industry. I provide details of Tabcorp's financial contributions to the Victorian racing industry under these arrangements in section E below.
- 113 In 2004, the *Gambling and Betting Act 1994* was repealed and materially re-enacted by amendments to the *Gaming Regulation Act 2003* (Vic). The *Gaming Regulation Act 2003* essentially carried on the scheme that had previously existed under the *Gambling and Betting Act 1994*.
- 114 Under the *Gambling Regulation Act 2003*, Tabcorp Wagering, as the sole wagering and betting licensee, is permitted to provide wagering services on-course and off-course in Victoria. Other than Tabcorp Wagering's Victorian Wagering and Betting Licence, there is no Victorian licence, permit or legislative provision that authorises an operator to provide off-course wagering services in Victoria. A number of bookmakers have 'on-course wagering permits' under the *Gambling Regulation Act 2003* that enable them to supply on-course bookmaking (i.e. fixed odds betting), but no entity other than Tabcorp Wagering may offer off-course bookmaking.
- 115 The *Gambling Regulation Act 2003* (Vic) requires the wagering licensee to make rules specifying the maximum totalisator commission, which must not exceed 25%, except for amounts invested in an internationally pooled totalisator concerning overseas events, which must not exceed 40%. The rules regarding commissions have no effect unless approved by the Treasurer. In accordance with this framework, Tabcorp's Victorian Totalisator Betting Rules currently specify the following maximum totalisator commissions as set out in **Figure 11** below. A copy of Tabcorp's Victorian Totalisator Betting Rules is at **Tab 29** of **DF-1 [TBP.015.001.5348]**.

Bet type	Commission
Win	14.50%
Place	14.25%
Quinella	17.50%
Duet	14.50%
Exacta	20.00%
Trifecta	20.00%

Bet type	Commission
AFL Win	20.00%
AFL Double	20.00%
AFL Xtra Double	20.00%
AFL Half/Full Double	20.00%
AFL Half/Full Xtra Double	20.00%
AFL Quad	25.00%

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First 4	22.50%	AFL Quarter Quad	25.00%
Daily Double	20.00%	AFL Winners	25.00%
Running Double	20.00%	AFL Margins	25.00%
Quaddie	20.00%	Tip 7	20.00%
BIG6	25.00%	Tip 8	20.00%
International Pooled Bet	The lesser of 40.00% or the maximum commission applying in the pooling (host) jurisdiction		

Figure 11: Commission permitted under Tabcorp's Victorian Totalisator Betting Rules

116 Tabcorp's Victorian Sportsbet Rules provide the conditions by which Tabcorp customers may wager on Tabcorp's fixed odds products and sports (other than racing). A copy of Tabcorp's Victorian Sportsbet Rules is at **Tab 30** of **DF-1 [TBP.015.001.4910]**.

C.3. Tabcorp's New South Wales wagering operations

117 TAB Limited is a New South Wales-based wholly owned subsidiary of Tabcorp which Tabcorp acquired in 2004. At **Tab 31** of **DF-1 [TBP.015.001.4960]** is a copy of Tabcorp's 2004/2005 Annual Report, which at page 9 refers to the acquisition of TAB Limited by Tabcorp in July 2004. TAB Limited is licensed under the *Totalisator Act 1997* (NSW) to provide off-course and on-course totalisator wagering services in New South Wales for thoroughbred, harness and greyhound racing until 2097. A copy of the New South Wales Wagering Licences is at **Tab 5** of **DF-2 [TBP.014.001.6066]**. Pursuant to a confidential agreement dated 20 June 2013, the New South Wales Government extended the original exclusivity period for the New South Wales Wagering Licences for a further 20 years from June 2013 to June 2033. TAB Limited also offers fixed odds betting on racing, and totalisator and fixed odds betting on sports and other events and Trackside products.

118 As the sole totalisator licensee in New South Wales, TAB Limited is exempt from the prohibitions in the *Unlawful Gambling Act 1998* (NSW) against bookmaking being carried on in New South Wales other than by 'licensed bookmakers' (defined in the *Betting and Racing Act 1998* (NSW) to mean a bookmaker licensed by a New South Wales racing controlling body). A number of bookmakers are licensed under the *Unlawful Gambling Act 1998* (NSW) to supply on-course fixed odds wagering, but the Act prohibits

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customers from wagering with bookmakers off-course. However, it is not an offence for a New South Wales customer to bet over the phone or internet with a bookmaker in another state or territory if that bookmaker is authorised or licensed to provide the service in that jurisdiction.

- 119 In New South Wales, TAB Limited offers wagering services through:
- (a) approximately 2,054 retail outlets, of which 197 are agencies / sub-agencies and 1,857 are licensed venues comprising hotels, clubs, and kiosks;
 - (b) approximately **[Confidential to Tabcorp]** ██████████ active accounts being an account that placed a bet in FY16 period³ (all of which are able to be accessed via the telephone or the internet throughout Australia – that is, customers outside New South Wales can bet with TAB New South Wales);
 - (c) on-course betting facilities located at approximately 160 race tracks throughout New South Wales;
 - (d) Tabcorp's online portal, www.tab.com.au; and
 - (e) iPhone, iPad and Android apps.
- 120 Tabcorp's wagering activities in New South Wales also include the operation of the NSW TAB totalisator pool, which pools with certain international totalisators as described in section C.6.iii below.
- 121 Under clause 43(2) of the *Totalizator Act 1997* (NSW), the licensee of the New South Wales Wagering Licences must have in place commercial arrangements with the racing industry in respect of the licence and the conduct of activities authorised by the licence. Accordingly, TAB Limited entered into a Racing Distribution Agreement on 11 December 1997 with Racingcorp Pty Ltd (formerly NSW Racing Pty Ltd), Greyhound Racing New South Wales (formerly Greyhound Racing Authority), Harness Racing New South Wales (HRNSW), Racing New South Wales (formerly New South Wales Thoroughbred Racing Board) (**Racing Distribution Agreement**). The Racing Distribution Agreement is subject to several amending agreements, namely an Amending Agreement dated 13 June 2000, Deed of Mutual Release dated 23 August 2002, Second RDA Amending Agreement dated 3 April 2003, Deed of Accession, Co-Operation and Amendment dated 22 December 2004, Third RDA Amending Deed dated 27 January 2011, Fourth RDA Amending Agreement dated October 2011, Fifth RDA Amending Agreement dated

³ Some of these accounts may be frozen for various reasons (e.g. pending ID verification), but they are all classed as open accounts.

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December 2012 and the Sixth RDA amending agreement dated 22 October 2013 (together, the **Amending Agreements**).

- 122 The Racing Distribution Agreement (as amended) outlines the rights and responsibilities of the parties and governs the payment of certain fees by TAB Limited. Tabcorp and TAB Limited have also entered into other agreements with the New South Wales racing industry such as the PGI Product Fee Agreement dated 22 October 2013 (**PGI Product Fee Agreement**). Pursuant to these agreements, TAB Limited makes certain financial contributions to the New South Wales racing industry. I provide details of Tabcorp's financial contributions to the New South Wales racing industry under these arrangements in section E below.
- 123 In New South Wales, the *Totalizator Act 1997* (NSW) requires the licensee to make rules specifying the maximum totalisator commission, which must not exceed 25%. The rules have no effect unless approved by the relevant Minister. Tabcorp's New South Wales Totalisator Betting Rules currently specify the following maximum totalisator commissions set out in **Figure 12** below. A copy of Tabcorp's New South Wales Totalisator Betting Rules is at **Tab 32** of **DF-1 [TBP.004.121.0001]**.

Bet type	Commission (not hosting international pools)	Commission (when hosting international pools)
Win	14.5%	14.5%
Place	14.25%	14.25%
Quinella	17.50%	25%
Exacta	20%	25%
Trifecta	21%	25%
Doubles	20%	25%
First 4	22.5%	25%
Quaddie	20%	25%
Duet	14.5%	25%
footyTab	25%	25%
BIG6	25%	25%

Figure 12: Commission permitted under Tabcorp's New South Wales Totalisator Betting Rules

- 124 TAB Limited has the following additional betting rules in New South Wales:

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- (a) The TAB Limited Declared Events Betting Rules (NSW), that provide the conditions by which its customers may wager on declared events under section 18 of the *Betting and Racing Act 1998* (NSW), such as sporting and other events. A copy of these rules is at **Tab 33** of **DF-1 [TBP.015.001.4852]**.
- (b) The TAB Limited Fixed Price Racing Betting Rules (NSW), that provide the conditions by which its customers may wager on fixed price racing betting in accordance with section 13 of the *Totalizator Act 1997* (NSW). A copy of these rules is at **Tab 34** of **DF-1 [TBP.015.001.4893]**.

C.4. Tabcorp's Australian Capital Territory wagering operations

- 125 In October 2014, Tabcorp acquired ACTTAB from the Australian Capital Territory Government. At **Tab 35** of **DF-1 [TBP.015.001.5020]** is a copy of Tabcorp's ASX announcement dated 14 October 2014 regarding its completion of the ACTTAB acquisition and at **Tab 36** of **DF-1 [TBP.011.001.0381]** is a copy of Tabcorp's 2013/2014 Annual Report which details the transaction at **[.0428]**. Tabcorp received informal merger clearance from the ACCC for the ACTTAB acquisition, a copy of which is at **Tab 37** of **DF-1 [TBP.006.001.0231]**.
- 126 As part of the acquisition, Tabcorp was issued a 50 year exclusive totalisator licence, a sports bookmaking licence for an initial term of 15 years with further rolling extensions for a total term of 50 years, and ongoing approvals to offer Keno and Trackside products for 50 years.
- 127 The Australian Capital Territory totalisator licence and approvals are held by Tabcorp ACT which is the sole provider of totalisator and fixed odds betting in retail outlets in the Australian Capital Territory until 2064. A copy of the totalisator licence held by Tabcorp ACT is at **Tab 6** of **DF-2 [TBP.014.001.1049]**.
- 128 As the holder of the sole off-course totalisator licence under the *Totalisator Act 2014* (ACT), Tabcorp ACT is permitted to provide on-course and off-course totalisator services in the Australian Capital Territory. Tabcorp ACT is also permitted to offer fixed odds on racing and sports pursuant to a licence issued under the *Race and Sports Bookmaking Act 2001* (ACT). Under the *Race and Sports Bookmaking Act*, the ACT Gambling and Racing Commission can designate "sports bookmaking venues" by way of 'disallowable instrument'. A disallowable instrument has been published (DI 2014-266) (**Tab 38** of **DF-1 [TBP.015.001.1823]**), which states that a "sports bookmaker who is not located at the premises known as the Canberra Racing Club, Thoroughbred Park, Lyneham, ACT, is not permitted to offer 'face to face' services to the public". There is an exemption for

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Tabcorp ACT, which provides retail exclusivity for racing and sports bookmaking. A number of bookmakers have licences under the *Race and Sports Bookmaking Act 2001* (ACT), but a disallowable instrument made by the ACT Gambling and Racing Commission limits these licences to on-course bookmaking.

- 129 Tabcorp ACT offers wagering services through:
- (a) approximately 43 retail outlets, of which 8 are agencies / sub-agencies and 35 are licensed venues comprising hotels, clubs and kiosks;
 - (b) approximately **[Confidential to Tabcorp]** ██████████ active accounts being an account that placed a bet in FY16 period⁴ (all of which are able to be accessed via the telephone or the internet throughout Australia – that is, customers outside the Australian Capital Territory can bet with Tabcorp ACT);
 - (c) on-course betting facilities located at 3 race tracks throughout the Australian Capital Territory;
 - (d) its online portal, www.tab.com.au; and
 - (e) iPhone, iPad and Android apps.
- 130 Tabcorp's agreements and arrangements with the Australian Capital Territory racing industry are included in the Industry and Community Support Deed dated 29 July 2014 between the Australian Capital Territory, Tabcorp Investments No. 8 Pty Ltd and Tabcorp (**Industry and Community Support Deed**). Tabcorp ACT also pays the ACT Gambling and Racing Commission an amount equal to **[HIGHLY Confidential to Tabcorp]** ██████████ ██████████ (as required under the terms of the Deed of Agreement (Trackside Approval) between Tabcorp ACT, the Australian Capital Territory Gambling and Racing Commission and Tabcorp dated 14 October 2014.
- 131 I provide details of Tabcorp's financial contributions to the Australian Capital Territory racing industry pursuant to this deed in section E below.
- 132 In the Australian Capital Territory, the *Totalisator Act 2014* (ACT) and the *Totalisator (Commission on Totalisator Betting) Determination 2014* permit the licensee to deduct a totalisator commission in an amount not more than 25%. Relevantly, the maximum totalisator commission under Tabcorp ACT's betting rules are identical to those set out above for Tabcorp's Victorian Totalisator Betting Rules (given ACTTAB pools with

⁴ Some of these accounts may be frozen for various reasons (e.g. pending ID verification), but they are all class as open accounts.

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SuperTAB). A copy of Tabcorp's Australian Capital Territory Totalisator Betting Rules is at **Tab 39** of **DF-1 [TBP.015.001.0438]**. A copy of Tabcorp ACT's Sports Bookmaking Rules which governs fixed odds bets placed with Tabcorp ACT is at **Tab 40** of **DF-1 [TBP.015.001.4934]**.

C.5. Tabcorp's Northern Territory wagering operations (Luxbet)

133 Luxbet, a wholly-owned subsidiary of Tabcorp, is a corporate bookmaker licensed by the Northern Territory Racing Commission. A copy of Luxbet's sports bookmaker licence and schedule of licence conditions is at **Tabs 7 and 8** of **DF-2 [TBP.015.001.4222]** and **[TBP.015.001.4227]**. Under the *Racing and Betting Act* (NT), holders of non-exclusive sports bookmaker licenses are permitted to supply fixed odds and tote derivative wagering on racing, sporting and other events over the phone and via the internet. There is no restraint on corporate bookmakers licensed in the Northern Territory supplying fixed odds and tote derivative wagering over the phone or via the internet to customers located in other Australian states and territories.

134 In order to obtain a sports bookmaker licence in the Northern Territory, an applicant must:

- (a) obtain a police check on all directors, major shareholders and key personnel;
- (b) prepare a deed of release and indemnity for suitability and probity purposes;
- (c) lodge a prescribed application form (including all required supporting documentation such as a \$200,000 bank guarantee, most recently audited financial statements and a three-year business plan outlining how the granting of the licence will benefit the Northern Territory);
- (d) comply with all Northern Territory racing rules and regulations and any conditions imposed by the Northern Territory Racing Commission; and
- (e) pay the requisite application fee (which was \$23,000 for 2015/2016).

A print out of the Northern Territory Government website that provides information on the application process to obtain a sports bookmaker licence is at **Tab 41** of **DF-1 [TBP.001.022.0215]**. A copy of the prescribed application form referred to in paragraph 134(c) above is at **Tab 42** of **DF-1 [TBP.001.022.0473]**.

135 A copy of Luxbet's Betting Rules which form part of the terms and conditions upon which customers place their bets with Luxbet is at **Tab 43** of **DF-1 [TBP.015.001.3759]**.

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- 136 Northern Territory licensed corporate bookmakers, such as Luxbet, are subject to certain obligations which include:
- (a) the payment of non-exclusive sports bookmaker licence fees (approximately \$23,000 for 2015/2016) which allows the bookmaker to take bets on sporting and other events over the phone and internet (an extract of the Northern Territory Government website describing this fee is at **Tab 44 of DF-1 [TBP.001.018.7440]**);
 - (b) the payment of Northern Territory State wagering tax of 10% of gross profit, capped at \$575,000 in FY16; and
 - (c) the payment of federal goods and services tax of 9.09% of revenue (which also applies to all wagering operators nationally).
- 137 As detailed in paragraph 304 below, the largest corporate bookmakers' profits far exceed the amount that is capped by the wagering tax in the Northern Territory. Therefore a large proportion of those corporate bookmakers' profits remain untaxed.
- 138 The legislative and regulatory requirements for fixed odds wagering are generally less onerous compared to the conditions that apply to State TABs more generally. In addition, corporate bookmakers contribute less to racing industry funding (as detailed in section E below).
- 139 Luxbet was launched in September 2008 as part of Tabcorp's response to the competitive impact corporate bookmakers were, and are, having on the wagering industry. Tabcorp wanted to enter the corporate bookmaker market to understand better how it operated and to ensure Tabcorp was able to offer the full range of products that are available to corporate bookmakers (but not to State TABs). At **Tab 45 of DF-1 [TBP.004.043.3100]** is a copy of Tabcorp's media release on 16 September 2008 which records Tabcorp's rationale for launching Luxbet.
- 140 Luxbet is a fraction of the size of the major corporate bookmakers in Australia by reference to both revenue and customer base. The entire combined turnover of all corporate bookmakers in FY15 was more than \$12 billion. Luxbet's turnover in FY15 was **[Confidential to Tabcorp]** . I set out at **Tab 1 of DF-3 [TBP.003.001.0725]** at **[.0755]** a copy of Tabcorp's September 2016 Board Paper which records these figures. By way of comparison, the total amount staked with Sportsbet during that period was €2.832 billion (being approximately A\$3.5 billion). A copy of the 2015 Annual Report of Paddy Power, the parent company of Sportsbet, which records this figure is at **Tab 46 of DF-1 [TBP.014.001.6089]**.

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C.6. Pooling arrangements

C.6.i. Totalisator pools

141 Pooling refers to arrangements between two or more totalisator operators whereby they combine their respective pools in order to provide a single, larger pool in which the customers of each participating totalisator operator can wager. This is typically referred to as 'pooling' or 'co-mingling'. Pooling arrangements generally involve a totalisator operator with a larger pool (the 'host') offering 'pooling services' to one or more other totalisator operators with smaller pools ('guest participants').

142 Australia has more totalisator pools than many overseas countries which have much larger populations and higher total wagering turnover. The existence of multiple pools in Australia is a reflection of history, in particular the fact that state and territory governments each established their own State TAB as I described above in section B.1. Over time, Australian totalisator pools have been combined as I describe below. Pooling between State TABs is highly regulated by state and territory governments in Australia such that State TABs cannot freely compete to provide pooling services to other State TABs. In order to pool with other State TABs or an overseas totalisator operator, an Australian totalisator must generally obtain racing industry approval (under either the terms of its racing industry agreements or wagering licence), state or territory government approval and wagering tax exemptions. I describe the framework upon which racing industry approval for pooling is required in section C.6.iv below.

143 While there are eight off-course State TABs in Australia, there are three combined totalisator pools, being:

- (a) **SuperTAB**: hosted by Tabcorp Wagering Manager through a combination of Tabcorp's Victorian and Australian Capital Territory pools and RWWA's Western Australian pool. RWWA is the only remaining totalisator operator in Australia which has entered into a pooling agreement with a third party operator (Tabcorp). In FY16, Tabcorp received approximately **[HIGHLY Confidential to Tabcorp]** ██████████ for the supply of pooling services from RWWA and RWWA contributes approximately **[Confidential to Tabcorp]** ██████████ of the SuperTAB pool liquidity. SuperTAB also co-mingles with international pools under various pooling agreements:

- i the New Zealand Racing Board (**NZ TAB**) since 2007;

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- ii Phumelela Gold Enterprises and Phumelela Gaming and Leisure Limited (which are licensed to conduct totalisator betting in South Africa) (together referred to as **Phumelela**) since 2007;
 - iii Premier Gateway International Limited (**PGI**) (into which some other international operators pool) since October 2012;
 - iv Singapore Turf Club since 2010 (Tabcorp 'guests' into Singapore's pools for wagering on Singapore racing);
 - v Hong Kong Jockey Club since 2014 (Tabcorp 'guests' into Hong Kong's pools for wagering on Hong Kong racing);
 - vi Aktiebolaget Trav Och Galopp (**ATG**) (which is a wagering operator based in Sweden that transmits its bets to SuperTAB via PGI) since 27 November 2014;
 - vii Stan James (which is a wagering operator based in the UK) that entered into a pooling agreement with Tabcorp Wagering Manager on 17 November 2014 (but has not yet processed any transactions); and
 - viii German Tote since January 2016 (German Tote 'guests' into SuperTAB via PGI).
- (b) **UBET**: hosted by UBET Qld Ltd, a wholly-owned subsidiary of Tatts, this pool pools with other Tatts' subsidiaries SATAB Pty Ltd (in South Australia), NTTAB Pty Ltd (in the Northern Territory) and TOTE Tasmania (in Tasmania) only. UBET does not pool with any entities outside of the Tatts group or any international operators;
- (c) **NSWTAB**: hosted by TAB Limited in New South Wales, NSWTAB co-mingles with international participants under various agreements:
- i PGI (into which some other international operators pool) since June 2011;
 - ii Singapore Turf Club since 2015 (Singapore Turf Club 'guests' into NSWTAB via PGI); and
 - iii Hong Kong Jockey Club since 2015 (Tabcorp 'guests' into Hong Kong's pools for wagering on Hong Kong racing).

144 All pooling participants must use the host's betting rules. For example:

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- (a) when other totalisators pool into NSW TAB or SuperTAB, the New South Wales and Victorian betting rules apply;
 - (b) when SuperTAB pools into New Zealand, the New Zealand betting rules and deduction rates apply; and
 - (c) when SuperTAB and NSW TAB pools into Hong Kong, the Hong Kong betting rules and deduction rates apply.
- 145 Since 2009, Tabcorp has sought ACCC authorisation for all of its domestic pooling arrangements. In 2014, Tabcorp sought authorisation for its current and future international pooling agreements entered into on similar terms:
- (a) SuperTAB's pooling arrangements with RWWA and ACTTAB were authorised by the ACCC on 11 December 2012, a copy of which is at **Tab 47 of DF-1 [TBP.006.001.0279]**. On 3 June 2016, the ACCC issued a determination re-authorising Tabcorp to give effect to an amended agreement with RWWA governing its participation in the SuperTAB pool. A copy of this determination is at **Tab 48 of DF-1 [TBP.015.001.0345]**.
 - (b) On 29 October 2014, the ACCC provided a draft determination for Tabcorp Wagering Manager, TAB Limited and Tabcorp ACT to give effect (or, for future agreements, to make and give effect) to specified provisions in international pooling agreements with the Hong Kong Jockey Club. A copy of that draft determination is at **Tab 49 of DF-1 [TBP.015.001.0358]**. On February 2015, the ACCC provided a final determination granting authorisation for Tabcorp Wagering Manager, TAB Limited, Tabcorp Europe Limited and Tabcorp ACT to enter into international pooling agreements with the Hong Kong Jockey Club. A copy of that determination is at **Tab 50 of DF-1 [TBP.015.001.0331]**.
- 146 Certain Tabcorp entities have entered into agreements with the Hong Kong Jockey Club in relation to pooling, including:
- (a) An agreement for provision of comingling odds calculation services between Tabcorp ACT and the Hong Kong Jockey Club; and
 - (b) An agreement for provision of comingling odds calculation service between Tabcorp Europe Limited, PGI Limited and the Hong Kong Jockey Club.
- 147 Certain Tabcorp entities have also entered into racing information and wagering data agreements with several overseas racing clubs. These agreements govern the provision of racing information and wagering data by the overseas club to Tabcorp for use in

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conjunction with its wagering and ancillary activities. Examples of these agreements include:

- (a) Tabcorp Manager Wagering Agreement between Tabcorp Manager Pty Limited and Phumelela dated 4 July 2009, as novated under the Tabcorp Manager Wagering Agreement – Novation Agreement with effect from 16 August 2012; and
- (b) TAB Wagering Agreement between TAB Limited and Phumelela dated 4 July 2009.

148 Similar racing information and wagering data agreements have been entered into by Tabcorp's media business operator, Sky Channel Pty Limited, and various overseas racing clubs. Under these agreements, Sky Channel Pty Limited provides audio and visual racing coverage and Tabcorp wagering data to the overseas racing clubs in exchange for those clubs taking wagers from the general public and paying to Sky Channel Pty Limited a portion of its wagering turnover. Examples of these agreements include:

- (a) Australian Racing Coverage and Wagering Agreement between Singapore Turf Club and Sky Channel Pty Limited; and
- (b) Australian Racing Coverage and Wagering Agreement between Phumelela Gold Enterprises, Phumelela Gaming and Leisure Limited and Sky Channel Pty Limited dated 4 July 2009.

C.6.ii. The SuperTAB pool

149 Under the pooling agreements with each of the guest participants in the SuperTAB pool:

- (a) the guest participants each agree to participate in the SuperTAB pool and adopt the SuperTAB Betting Rules; and
- (b) Tabcorp agrees to provide these guest participants with pooling services and accepts investments of certain bet types for inclusion in the SuperTAB pool in return for a processing fee.

150 In practice, the SuperTAB pool is operated on a 'gross pool basis', which generally works as follows:

- (a) each of the participating TABs conducts its own pari-mutuel wagering business in the course of which it supplies SuperTAB wagering products to customers (i.e. it accepts bets from its customers);

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- (b) the bets collected by each TAB are then combined with the bets from other operators into the SuperTAB pool by bet type;
- (c) the commission is notionally deducted from the SuperTAB pool and credited to the SuperTAB pool participants (in proportion to the total wagers placed with that participant);
- (d) Tabcorp operates the SuperTAB pool, calculates the respective odds and determines the amount available to pay dividends to winning customers;
- (e) each SuperTAB pool participant pays dividends to its successful customers who have made an investment with that participant;
- (f) a cash settlement is necessary in circumstances where the amount of the dividends required to be paid by a pool participant to winning customers does not equal the customers' proportional share of bets with that pool participant. The cash settlement also takes into account pooling fees paid to Tabcorp for its operation of the pool. Cash settlements generally take place every four weeks in arrears; and
- (g) Tabcorp invoices each guest participant for the amount of the processing fee.

151 There is a complex web of relationships between the multiple stakeholders in the SuperTAB pool, including:

- (a) Tabcorp, as the host;
- (b) the guest participants;
- (c) state racing industry bodies; and
- (d) state governments.

152 Clause 9.1(d) of the current JVA with VicRacing, provides **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C.6.iii. NSWTAB pool

153 As mentioned above, while the NSWTAB pool does not pool with any other Australian State TABs, it does pool internationally with PGI, Singapore Turf Club and Hong Kong Jockey Club.

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- 154 In practice, the NSW TAB generally operates in the same manner as the SuperTAB pool (as described in paragraphs 149 to 150 above), although in respect of a small number of international pooling participants only.
- 155 TAB Limited is not permitted to pool with other totalisator operators without necessary racing industry and regulatory approvals. Under clause 3(14) – (16) of the New South Wales Off-Course Licence, **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Similarly, under the Racing Distribution Agreement (as amended) (referred to in paragraph 121 above), **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]. Racingcorp Pty Ltd is the main contracting entity and performs all of the key obligations of the New South Wales racing industry under the Racing Distribution Agreement (as amended).

C.6.iv. Pooling considerations

- 156 As part of my role as Executive General Manager – Commercial Development at Tabcorp I am involved in negotiating the commercial arrangements for Tabcorp to provide pooling services to certain guest totalisator operators. I also liaise with the racing industry in order to obtain the relevant approval for Tabcorp to provide such pooling services.
- 157 Decisions on whether to host pooling services to particular guest totalisators are made on a case by case basis. In each case, it is a commercial decision involving the weighing up of a number of considerations, including:
- (a) the amount of the processing fee paid by the guest participant;
 - (b) the extent to which the guest participant increases the size of the pool;
 - (c) the extent to which the provision of pooling services to the guest participant is supported by the relevant industry body;
 - (d) the risk arising out of guest participants acquiring Tabcorp's customers, usually through offering attractive rebates; and
 - (e) the contractual arrangements the other party is willing to accept.

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- 158 Tabcorp and relevant state-based racing industry bodies have entered into pooling arrangements with other totalisator operators as described above principally in order to increase the size of our totalisator pools, thus making the sale of bets more viable. Tabcorp also benefits from obtaining pooling fees under these arrangements.
- 159 A number of benefits flow from access to a large totalisator pool:
- (a) **Stability:** the larger the totalisator pool, the greater its stability – that is, larger bets will have less effect on the final dividends. This benefits both customers placing larger bets and customers placing smaller bets whose dividends could be affected by the larger bets. Larger pools give customers greater confidence that they will receive the returns that they were expecting when they placed their bets. For example, a large bet placed with a small totalisator operator (without access to a large pool) could substantially distort the calculation of dividends for the relevant race and, in turn, affect potential winnings of all customers who wagered on that race. The final dividend may differ substantially from the indicative dividends published at various times before the start of the race as subsequent bets invested into the pool affect the final dividends to be paid. The influence of subsequent bets invested into the pool on the final dividends is a function of the percentage of the total pool on each selection and the size of the pool. The larger the pool, the smaller the effect of subsequent bets on the dividends or pay-out odds for earlier bets. Professional and sophisticated customers who place large pari-mutuel bets often bet into all Australian totalisator pools on the same event, and can and do place bets with international totalisator operators. In Tabcorp's experience, these customers typically place their bets in the final moments or seconds before a race and can represent a proportion of approximately **[Confidential to Tabcorp]** of the pool size. This late money can significantly shift the odds very close to the start of any event.
 - (b) **Larger dividends:** a larger pool means there is potentially more money available to distribute to winning customers. This increased liquidity enables customers to bet larger amounts on all contestants without significantly impacting the dividends paid.
 - (c) **Access to additional pari-mutuel wagering products:** Pooling allows smaller State TABs such as the WA TAB or ACTTAB to offer customers pari-mutuel wagering bet types and products which they may not otherwise have access to (for example, international races).


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- (d) **Ability to attract more customers:** A larger totalisator pool or the availability of new products are important to the attractiveness to the customer of a totalisator operation. Having access to a larger pool assists a State TAB to attract customers (especially customers who typically wager on fixed odds but may not get their bet accepted by a fixed odds operator due to the large size of the bet). The size of the totalisator pool is an important factor considered by certain customers when choosing where to place a bet, and therefore pooling arrangements will assist totalisators to compete more effectively with other large totalisator pools (including international pools) and fixed odds wagering.
- (e) **Access to new products:** As mentioned above, new products need liquidity to be viable. Australian customers would not be able to access more obscure racing products without pooling which makes those products viable (for example South African thoroughbred racing). The larger a totalisator pool, the more attractive it will be to international totalisators seeking to pool with Australian State TABs. A guest participant entering into a pooling arrangement with a host totalisator operator potentially will gain access to new pari-mutuel wagering products, including internationally pooled bets, through participation in the pool.
- (f) **Access to smaller bet types:** With the recent decline in pari-mutuel betting, some pools, particularly less popular bet types (such as duet), are becoming so small that they are too unstable to sustain a large bet. A co-mingled pool will reduce the impact of declining pool sizes.

160 As pool sizes decline this may create a downward spiral of continued decline as fewer customers are attracted to placing pari-mutuel bets. A smaller pool size makes the totalisator products less viable to attract a sufficient pool of bets and attract customer interest. This creates a downwards spiral whereby a shrinking pool is less attractive to customers looking to place bets and may mean customers cannot bet anywhere, which then causes the pool to shrink further.

161 **Figure 13** and **14** below illustrate the benefits of offering larger pools through co-mingling with international hosts for foreign races, namely through a material turnover increase. **Figure 13** shows the impact of guesting with the NZ TAB for 'win', 'place' and 'quinella' bet types on Tabcorp's Victorian pari-mutuel turnover for the period 25 February 2008 – 10 June 2008 (**TY**), compared to the period 25 February 2007 – June 2007 (**LY**) and compared to other bet types. It shows that there was a **[Confidential to Tabcorp]** guesting benefit arising from certain bet types that were pooled between SuperTAB and NZ TAB. **Figure 14** shows the increase in pool sizes for three

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bet types on New Zealand races arising from NZ TAB pooling with SuperTAB. Within that combined pool, bets from SuperTAB represented approximately **[Confidential to Tabcorp]** .

[Confidential to Tabcorp]

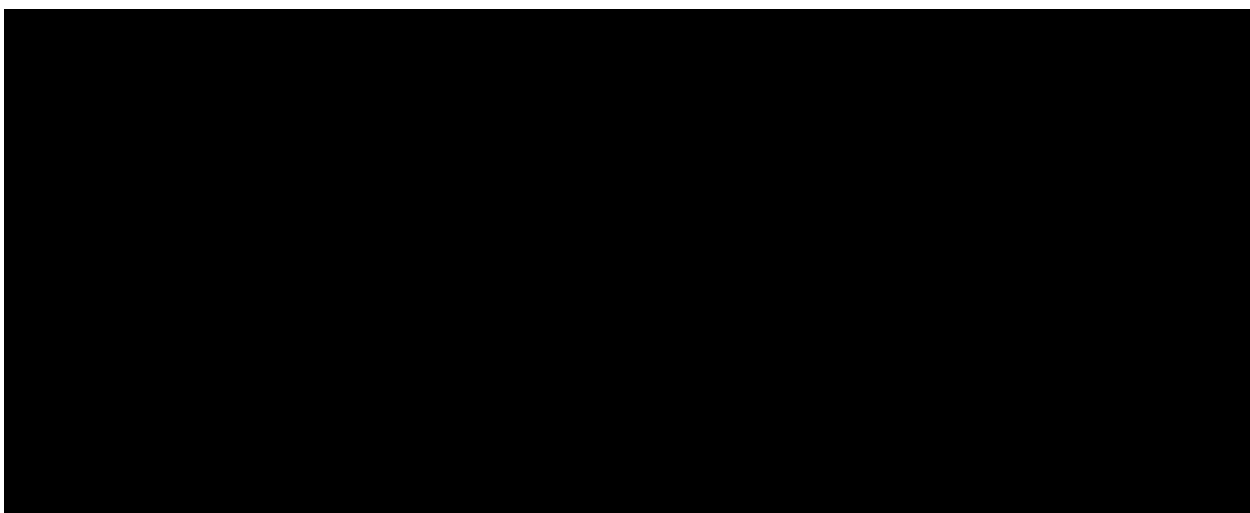


Figure 13: benefits of guesting with NZ TAB on Victorian TAB pari-mutuel turnover for the period from 25 February 2008 to 10 June 2008

[Confidential to Tabcorp]

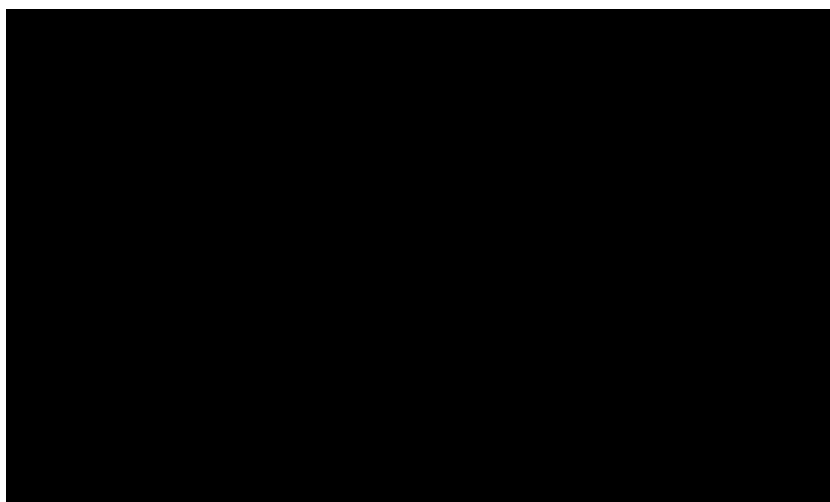




Figure 14: Increase in pool size from guesting into NZ TAB

162 **Figure 15** below depicts the pari-mutuel pools offered in FY15, illustrating that **[Confidential to Tabcorp and Tatts]** % of all pools across the SuperTAB, NSWTAB and Tatts pools held less than \$5000 in liquidity, with only **[Confidential to Tabcorp and Tatts]** % of non-rebated parimutuel turnover from Tabcorp and Tatts in that period being invested into those pools.

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[Confidential to Tabcorp and Tatts]

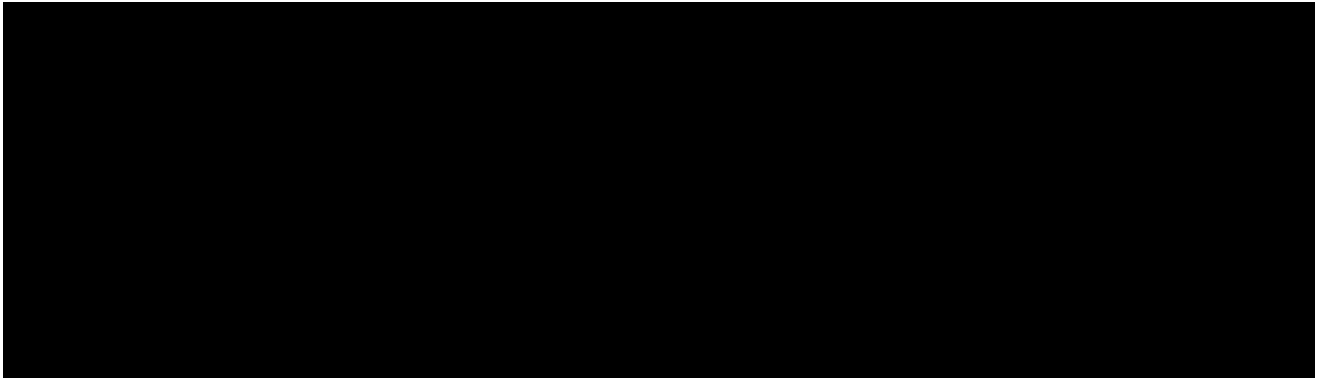


Figure 15: pari-mutuel pools offered in FY15]

163 To illustrate how even a modest bet can have a substantial impact on smaller pools I set out below:

- (a) **Figure 16:** which shows the change in dividend resulting from a \$500 bet placed in pools varying in size from \$5,000 to \$30,000. Even in a pool of \$30,000, the placing of a \$500 bet will reduce a pre-bet dividend of \$20.00 to a post-bet dividend of \$14.60.
- (b) **Figure 17:** which shows the reduction from the pre-bet dividend in percentage terms.
- (c) **Figure 18:** which shows the percentage reduction in the winnings received by the customer as a result.

These calculations are based on a take-out rate of 14.5%.

Pre-bet dividend (\$)	Post-bet dividend by pool size				
	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000
4.00	2.90	3.40	3.50	3.60	3.70
10.00	5.00	6.60	7.40	7.90	8.50
20.00	6.50	9.60	11.60	12.90	14.60

Figure 16: Post-bet dividend paid (\$)

Pre-bet dividend (\$)	Post-bet dividend by pool size				
	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000
4.00	27.5	15.0	12.5	10.0	7.5
10.00	50.0	34.0	26.0	21.0	15.0

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20.00	67.5	52.0	42.0	35.5	27.0
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Figure 17: Percentage reduction in dividend

Pre-bet dividend (\$)	Post-bet dividend by pool size				
	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000
4.00	36.7	20.0	16.7	13.3	10.0
10.00	55.6	37.8	28.9	23.3	16.7
20.00	71.1	54.7	44.2	37.4	28.4

Figure 18: Percentage reduction in winnings

164 There are currently a number of barriers to combining totalisator pools in Australia. The following factors are relevant:

- (a) **Approvals and exemptions:** In order to pool with another totalisator operator, Tabcorp needs to obtain racing industry approval, approvals from various state regulatory bodies and state wagering tax exemptions. Wagering tax exemptions are required to ensure bets are not 'double taxed' by taxing both the host in one state and the guest participant in another state, based on the same revenue. Regulatory approval absent industry approval is unlikely. ACCC authorisation may also be required in respect of certain pooling arrangements;
- (b) **Disadvantages to state participants:** state and territory governments and racing industries (in particular, New South Wales) are concerned that combined pools may lead to a loss in revenue from one state to other jurisdictions, which would impact profit shares, fees and state wagering taxes. This may occur where a customer who would ordinarily place their bet with the host participant instead places their bet with another participant (the guest), resulting in the loss of revenue to the host and a flow-on loss of racing industry contribution and relevant taxes being paid in the host participant's jurisdiction (or vice versa). This concern is accentuated where Tabcorp is not the owner of both pools. Agreements need to be negotiated between the state-based racing industry and the State TAB to provide sufficient certainty around this. Post-merger, Tabcorp will be better positioned to enter into contractual arrangements that may provide this certainty and therefore move towards a combination of pools because it has a record of pooling successfully in a manner that does not materially disadvantage or prejudice other state participants, for example, SuperTAB;

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- (c) **Betting rule alignment:** in order to pool, the systems and betting rules of the State TABs must be aligned, including in respect of payments of dividends to winning customers. This requires regulatory approval and in some jurisdictions, it would also require Treasury consent to change take-out rates; and
- (d) **Cost:** the cost to combine pools is significant. Tabcorp estimates that every time it co-mingles with a new totalisator operator, it costs approximately **[Confidential to Tabcorp]** [REDACTED]. These costs principally reflect the costs of integrating the different software platforms of the two pools to ensure they can interoperate effectively.

165 The Victorian Racing Industry has for a number of years raised the prospect of pooling between NSW TAB and SuperTAB and has lobbied for trial pooling between the two states. Historically, the New South Wales racing industry has not been in favour of pooling NSW TAB with other pools (including SuperTAB). However, I expect that this position may change given:

- (a) as the popularity of pari-mutuel wagering is decreasing (as I describe further in section G.3 below), the size of the NSW pools are also decreasing. This in turn makes the totalisator products less viable to attract a sufficient pool of bets and customer interest;
- (b) NSW TAB now has experience at pooling with some international totalisator operators without any material issues; and
- (c) Post-merger Tabcorp will be able to demonstrate greater contractual certainty than it could previously with third party pooling.

166 More importantly, I believe a merger between Tabcorp and Tatts will reduce the concern of the New South Wales racing industry regarding potential disadvantages arising from combining totalisator pools because Tabcorp will own (through its wholly-owned subsidiaries) the Tatts' pools and the state racing industries will have contractual protection in respect of revenue derived from within their jurisdiction.

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

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

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

(a) [REDACTED]

(b) [REDACTED]

i [REDACTED]

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- [REDACTED]
- [REDACTED]
- ii [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (c) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (d) [REDACTED]
- [REDACTED]
- [REDACTED]
- (e) [REDACTED]
- [REDACTED]

C.7. Trackside

- 170 Tabcorp screens a computerised virtual horse race known as Trackside (and formerly as Tabrace). Customers can place fixed odds bets on Trackside races as though they were betting on actual horse races. Customers may place bets in amounts between \$0.50 and \$1000. A sample ticket is set out at **Tab 51** of **DF-1 [TBP.001.018.8204]**.
- 171 Apart from a license granted by Tabcorp to Crown Casino in Perth for the operation of Trackside, Tabcorp is the only Australian wagering operator that currently provides Trackside. Copies of the various betting rules that establish the conditions under which Trackside is conducted in New South Wales, Victoria and the Australian Capital Territory are at **Tabs 52, 53 and 54** of **DF-1 [TBP.015.001.4213], [TBP.015.001.5413]** and **[TBP.015.001.0518]**.
- 172 In New South Wales, TAB Limited is permitted to conduct betting on computer simulated horse racing, harness racing or greyhound racing events pursuant to an approval from the Minister issued under section 13 of the *Totalizator Act 1997* (NSW).
- 173 The ministerial approval was part of multi-faceted confidential arrangements between TAB Limited, Racing NSW and the New South Wales Government. On 23 December

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2010, TAB Limited and the State of New South Wales entered into a confidential deed which sets out the obligations of the parties in relation to, among other arrangements, the approval of Trackside as a wagering product in New South Wales.

174 In Victoria, the terms of the Victorian Wagering and Betting Licence allow Tabcorp to offer approved simulated racing games. Trackside is an approved betting competition under Part 4 of the *Gambling Regulation Act 2003* (Vic). The conditions for this approval are contained in a Victorian Government Gazette notice issued on 12 September 2016 (at **Tab 55** of **DF-1 [TBP.001.029.0018]**).

175 In the Australian Capital Territory, as part of Tabcorp's acquisition of ACTTAB the Australia Capital Territory Government issued approvals to offer Trackside products for 50 years. Trackside is regulated as an approved lottery under section 7 of the *Lotteries Act 1964* (ACT).

C.8. Customer management and support**C.8.i. Tabcorp's customers**

176 Tabcorp's wagering customers consist of account customers (who hold betting accounts with Tabcorp) and non-account customers (who bet in cash and do not hold accounts).

177 Non-account customers may only place cash bets through Tabcorp's (or another State TAB's) retail channels. Account customers may wager through Tabcorp's, or another wagering provider's, online, telephone or retail channels. Most of Tabcorp's account customers are individual customers but Tabcorp has some corporate account customers, including corporate bookmakers.

178 Tabcorp provides its services to account customers under its standard terms and conditions, including its Website Terms of Use, TAB Account Terms and Conditions (applicable to Victorian TAB, New South Wales TAB and Australian Capital Territory TAB account holders), TAB Bonus Bet General Terms and Conditions and TAB Cash Out Terms and Conditions. A print out of these terms and conditions taken from Tabcorp's website is at **Tab 56** of **DF-1 [TBP.001.018.7618]**.

179 All of Tabcorp's customers are free to wager through another or multiple wagering service providers, or to cease wagering through Tabcorp, at any time. Customers are able to open multiple accounts with State TABs and corporate bookmakers at no cost to the customer. Corporate bookmakers also offer new customers a variety of incentives to open an account and start betting with them. These range from signup bonus bet offers to money back or bonus bet refunds on selected events. At **Tab 57** of **DF-1**

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[TBP.001.018.5445] is a copy of a print out from CrownBet's website which states that when a customer opens a new account with CrownBet, the customer's first bet will be matched with bonus bets up to a maximum of \$500 (excluding customers from Victoria, New South Wales, South Australia and Western Australia who are ineligible due to regulations prohibiting inducement of wagering in those states). The CrownBet Bonus Rules require the customer to turnover their bonus bets winnings once before they can be claimed and withdrawn and also have set minimum odds that the bonus bet need to be used on. Customers, particularly in the younger demographic, now typically have multiple accounts with a number of wagering operators and loyalty towards a particular provider has decreased. Even in retail venues it is common for Tabcorp's customers to be placing bets with Tabcorp's competitors via digital devices.

180 I do not expect any change to Tabcorp's customer arrangements described above following the proposed merger.

181 The number of wagering operators used on various customer digital wagering channels (iPhone, iPad, website and android) has increased over the past few years to more than 2 per device. Increased competition provides customers with a variety of offers and experiences and encourages customers to sustain a repertoire of accounts. I set out at **Figure 19** below a table showing the number of wagering operator brands in use by device type (excluding use by cash customers) between 2012 and 2015 (taken from Tabcorp's September 2016 Board Paper at **Tab 1 of DF-3 [TBP.003.001.0725] at [.0822]**). This also shows that in 2015, customers using digital devices to place bets had an average of over 2 wagering operator brands in use.

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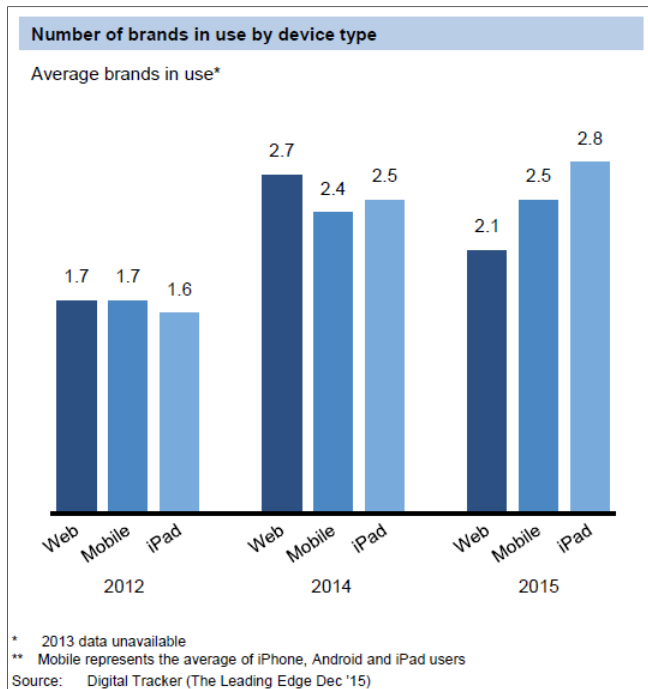


Figure 19: Estimate of number of wagering operator brands in use by device type

- 182 At **Tab 9** of **DF-2 [TBP.014.001.2329]** is a Brand and Communications Tracking presentation from May 2016 titled 'Brand and Communications Measurement, Autumn Report 2016'. This presentation contains a slide at **[.2363]** titled 'Who else are they using?' which notes that an average of 3.5 wagering providers were accessed by 53% of certain wagering customers in the previous 12 months, for reasons including access to more bet types and to shop around for the best odds or promotions/deals.
- 183 Tabcorp customers located in the jurisdictions where Tatts holds a state-based wagering licence are able to make pari-mutuel and fixed odds bets with Tabcorp online or over the phone. These customers comprise a very small proportion of Tabcorp's business as demonstrated in **Figure 20** and **Figure 21** below which show that the activity of Tabcorp customers located in Tatts' states accounted for **[Confidential to Tabcorp]**. Conversely, most of Tabcorp's New South Wales and Victorian wagering turnover is derived from activity by customers located in each of those states respectively (as opposed to customers who place online or telephone bets from other jurisdictions). For example as demonstrated in **Figure 20** and **Figure 21** below, turnover from cash bets placed in New South Wales **[Confidential to Tabcorp]** and account customers based in New South Wales **[Confidential to Tabcorp]** totalled **[Confidential to Tabcorp]**, which represents approximately **[Confidential to Tabcorp]** of all Tabcorp's New South Wales wagering turnover. The balance of Tabcorp's

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New South Wales wagering turnover was derived from account bets placed from customers domiciled in jurisdictions other than New South Wales. My understanding is that in Western Australia, RWWA would similarly obtain a very small amount of wagering turnover from customers domiciled outside of Western Australia who place their bets with the WA TAB online or by telephone because it is likely to advertise its digital offering more extensively within Western Australia and as it does not have a retail presence outside Western Australia, customers domiciled outside of Western Australia would be less aware of its brand.

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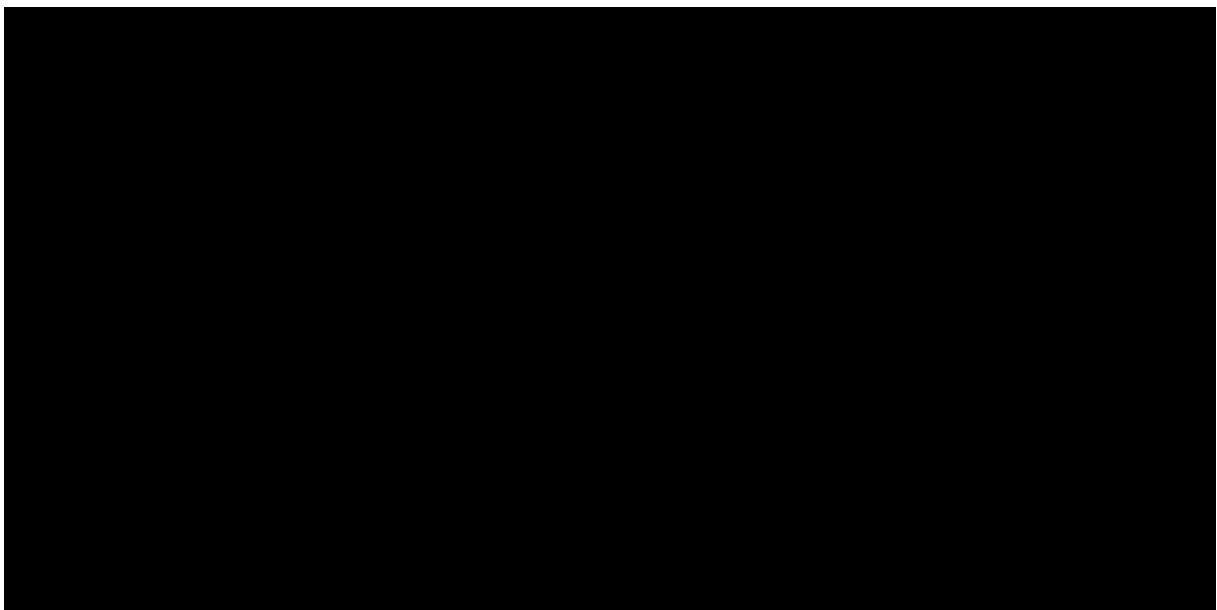
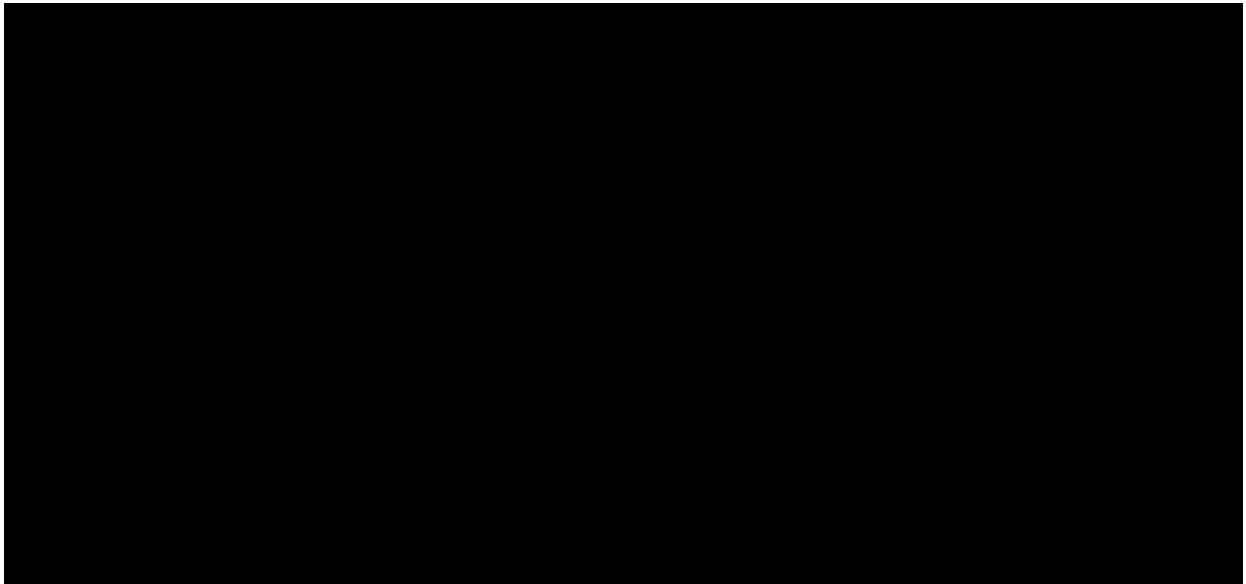


Figure 20 and 21: Activity of Tabcorp customers in each state and territory compared to TAB and Luxbet revenue and turnover.

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184 In some jurisdictions, including in New South Wales, Tabcorp and other wagering operators are subject to 'minimum bet rules' in respect of fixed odds betting. These rules require wagering operators to accept bets up to a prescribed liability cap to ensure that customers have access to certain betting options. This also addresses a concern that wagering operators may not accept bets from successful customers. Racing NSW requires wagering operators using New South Wales race fields information to accept a fixed odds bet at the odds publicly displayed by the operator. For example, in a metropolitan fixed odds thoroughbred race in New South Wales, Tabcorp must accept a 'win' and/or 'each way' bet up to \$2,000. Subject to some limited exceptions, Racing NSW has also prescribed certain anti-avoidance measures. For example, a wagering operator that is approved to use New South Wales race fields information cannot avoid complying with the minimum bet requirements by refusing to accept bets, closing a customer's betting account or placing restrictions on a customer's account.

C.8.ii. Customer relationship management

185 Tabcorp has implemented and continues to implement certain measures to improve its customer relationships including a 'customer relationship management strategy' and a 'high value management strategy'. A summary of Tabcorp's customer strategy for FY17 is at **Tab 38** of **DF-3 [TBP.001.018.5449]**. Tabcorp's customer strategy involves:

- (a) strengthening the Tabcorp insights program to enhance customer centred decision making based on Tabcorp's understanding of what drives and motivates current and potential customers;
- (b) establishing a voice of customer program and customer scorecard to embed the customer into the business;
- (c) building a framework for enhanced customer-led innovation;
- (d) enhancing the customer lifecycle through delivering communications and a loyalty program that nurtures long term relationships; and
- (e) **[HIGHLY Confidential to Tabcorp]** [REDACTED].

186 Tabcorp's High Value Management Strategy aims to retain and maximise Tabcorp's share of high value wagering customers in Australia. At **Tab 39** of **DF-3 [TBP.001.027.5195]** is a presentation summarising Tabcorp's high value management strategy as at November 2016. That presentation notes that at the close of FY16 the High Value team had **[HIGHLY Confidential to Tabcorp]** [REDACTED].

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[REDACTED]

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

[REDACTED]

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

189 An increasingly important aspect of managing Tabcorp’s customers’ experiences is the development and maintenance of Tabcorp’s website and apps. In particular, Tabcorp is continuing to develop its website and apps to ensure ease of navigation by customers to improve overall customer satisfaction. I set out at **Tab 10** of **DF-2 [TBP.001.018.5447]**, a copy of Tabcorp’s Customer Insight Update dated January 2017, which compares the digital performance of Tabcorp and UBET. The analysis shows that **[Confidential to Tabcorp]** [REDACTED]

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

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(e) [REDACTED].

190 Following the proposed merger, Tabcorp plans to introduce its customer relationship management systems and the improvements made to its website and apps as identified above across the merged entity.

C.8.iii. Premium wagering customers

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

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

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

Figure 22: Tabcorp rebate offers to premium customers, FY2017

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

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

(a) [REDACTED]
[REDACTED]

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(b) [REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]

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

(a) [REDACTED]
[REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

196 Tabcorp's premium customers are based in Australia and overseas (although the majority of turnover from premium customers is derived from individuals whom are based overseas). All of these customers use highly sophisticated wagering systems and some may place bets in multiple jurisdictions simultaneously.

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197 **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED], Tabcorp offers a loyalty program which allows customers to gain points that can be redeemed for free bets and other 'soft' rewards (described in further detail below).

198 I set out at **Tabs 40 – 43** of **DF-3**, the following documents which contain details of Tabcorp's premium customer programs for FY17:

- (a) Premium Customer FY17 Advance Promotional Scheme **[TBP.001.018.5731]**;
- (b) Premium Customer FY17 Advance+ Promotional Scheme **[TBP.001.018.5739]**;
- (c) Premium Customer FY17 New Promotional Scheme **[TBP.001.018.5753]**; and
- (d) Premium Customer FY17 Entry Promotional Scheme **[TBP.001.018.5746]**.

C.8.iv. Wagering support services

199 Tabcorp provides subsidised wagering support services for customers, such as racing vision, audio, form (that is, statistical information about the race participants) and other data that is displayed at licensed venues (hotels pubs, clubs and other venues). For example:

- (a) Tabcorp contributes to the funding of newspaper form guides in major daily newspapers in Victoria and New South Wales (accessible throughout Australia);
- (b) Tabcorp pays contributions to subsidise the cost of providing Sky Racing's Pay TV racing vision service into households, which allows Sky Racing to be included in the base tier subscription account for Foxtel customers.
- (c) Tips and ratings for racing events through tab.com.au, Daily Form Service (**DFS**) Form and SkyRacing Form to provide customers with the ratings of a runner's potential performance.

200 Tabcorp provides these services to promote racing as a whole. It also ensures information that is intended to enhance the racing experience for customers is accessible and thereby drive wagering turnover and increase industry funding.

201 Corporate bookmakers are, to some extent, able to 'free ride' on Tabcorp's wagering support services to obtain the benefits without having to fund or subsidise any of these services. This is because these services are available to all customers whether or not they bet with Tabcorp.

Confidential Restriction on Publication Claimed**C.8.v. Responsible service of gambling**

201A Tabcorp is a global leader in the responsible service of gambling and it has implemented various initiatives and programs as part of its ongoing commitment to responsible gambling practices. Tabcorp's Responsible Gambling Code of Conduct sets the standards across its wagering business for the responsible delivery of gambling products (a copy of which is at **Tab 58 of DF-1 [TBP.001.018.6925]**). Tabcorp has also adopted separate codes of conduct relating to Keno (at **Tabs 59 and 60 of DF-1 [TBP.001.018.8246]** and **[TBP.001.018.6905]**). Tabcorp's responsible gambling strategy involves primary prevention (such as educational campaigns), secondary prevention (to actively communicate with customers within gambling venues) and safety net initiatives (such as Betcare, a voluntary self-exclusion program for customers who have acknowledged problem gambling). Tabcorp monitors account customers who have been identified as problem gamblers (either by Tabcorp or through self-identification). At **Tab 11 of DF-2 [TBP.001.018.7420]** is a spreadsheet which provides the number of Tabcorp's problem gambling accounts and customers participating in Betcare for the period January 2015 – October 2016. A copy of Tabcorp's brochure on Betcare is at **Tab 61 of DF-1 [TBP.001.018.4748]**.

D. TABCORP'S MEDIA OPERATIONS

202 Tabcorp currently:

- (a) operates three Sky Racing television channels in Australia;
- (b) distributes Australian and New Zealand racing vision through third party international racing channels which are broadcast into 54 countries around the world via satellite, cable, mobile, internet, apps and paid subscription TV platforms;
- (c) manages the distribution of Australian, New Zealand, South African and Argentinian racing and data throughout the Americas through Sky Racing World, LLC based in Louisville, Kentucky; and
- (d) operates the Sky Sports Radio network in New South Wales and the Australian Capital Territory.

203 Customers often want to watch the event on which they have placed a bet live. A large part of attracting wagering customers depends on the provision of accurate and timely access to racing coverage. Where races are televised and broadcast into venues, the wagering turnover in those venues is significantly increased. Vision is therefore

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important to Tabcorp's retail wagering venues, and Tabcorp has a strong commercial incentive to ensure that racing vision is available at its retail outlets.

- 204 Tabcorp also has a strong commercial incentive to acquire media rights in those states in which Tabcorp does not currently hold the retail wagering licence, as Tabcorp customers also bet on races in those states and Sky Racing derives revenue from supplying that vision to third party State TABs and retail outlets located in states in which Tabcorp does not hold a retail wagering licence. Racing bodies are similarly incentivised to have their races shown in other states given the funding they receive from wagering turnover.

D.1. Sky Racing television

- 205 Tabcorp operates, via its wholly owned subsidiary Sky Channel Pty Ltd (**SKY**), three Sky Racing television channels, which broadcast thoroughbred, harness and greyhound racing and other sports to audiences in TAB outlets, hotels, clubs, other licensed venues, and into homes to pay TV subscribers. Sky Racing digitally transmits to more than 5,000 outlets across Australia and telecasts more than 100,000 races per year. SKY also produces international racing television channels that are broadcast into 54 countries around the world via satellite, cable, mobile and the internet.
- 206 SKY acquires the television broadcasting rights from media rights holders around Australia and internationally and then:
- (a) broadcasts racing vision through Sky Racing television channels; and
 - (b) distributes racing vision and data internationally through third party television channels and wagering operators.
- 207 The three channels operated by SKY are Sky Racing1, Sky Racing2 and Sky Thoroughbred Central:
- (a) Sky Racing1 was the first Sky Racing channel and gives viewers comprehensive Australian thoroughbred, harness and greyhound racing coverage. It also includes some international racing;
 - (b) Sky Racing2 provides additional racing content not covered on Sky Racing1, and features international racing as well as additional Australian thoroughbred, harness and greyhound racing; and
 - (c) Sky Thoroughbred Central is a thoroughbred racing channel, showcasing thoroughbred racing from Australia and internationally, with in-depth analysis, mounting yard and expert comments.

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- 208 Sky Racing1 and Sky Racing2 are the core wagering channels and combined they provide vision of essentially all races on which Tabcorp offers wagers.
- 209 Sky Racing currently has agreements with both Tatts and RWWA for the provision of Sky Racing to Tatts' and RWWA agencies. In relation to Tatts, the licensed venues that supply wagering services for Tatts' retail venues obtain vision directly from Sky Racing (with the exception of retail venues in Tasmania, where Tatts distributes Sky Racing vision to venues through an agreement with Sky Racing). In relation to the RWWA agreement, RWWA distributes Sky Racing vision to licensed venues in Western Australia.
- 210 Tabcorp licensed venues are required to subscribe to Sky Racing1 and Sky Racing2. These products have been designed to ensure that the venue has access to vision for all races on which Tabcorp is taking bets, and the vision on Sky Racing1 and Sky Racing2 is coordinated. Tabcorp considers that it is appropriate and important for the success of Tabcorp retailers to ensure that Tabcorp venues display these products. Tabcorp does not prohibit its licensed venues from taking a product from an alternative vision provider.
- 211 Like Tabcorp, Tatts also requires vision in its retail outlets. Its agreements require licensed venues to obtain 'a full race telecasting service'. I understand that there is no specific reference to Sky Racing within the Tatts agreements. However, I also understand that, in order to comply with the requirement referred to above, Tatts considers that venues must, at a minimum, have Sky Racing1.
- 212 In order to acquire the television broadcasting rights, SKY negotiates with the relevant media rights holders. The ultimate media rights holders are the racing clubs, however, SKY does not generally negotiate directly with individual racing clubs as there has been a trend for the peak racing bodies in each state or territory to acquire and aggregate the media rights held by the respective clubs in their jurisdiction. SKY negotiates with these peak bodies for the media rights that those bodies hold and represent.
- 213 Racing media rights are often divided and sold by these peak bodies by distribution channel. For example, SKY acquires the exclusive right to broadcast racing vision domestically via its pay television channels and into commercial venues, and it also seeks to acquire, where possible, the rights to broadcast that vision internationally, which it then distributes internationally. However, peak bodies can also sell the digital broadcast rights for the same content to commercial free-to-air television channels, online broadcasters, or to corporate bookmakers for online distribution to their account holders.

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- 214 For example, in New South Wales, while Sky Racing's rights are exclusive in respect of pay television and commercial venues, they are non-exclusive in respect of digital rights. Following Sky Racing reaching agreements with Racing NSW and the Australian Turf Racing for the acquisition of media rights in January 2015, Racing NSW subsequently entered into an exclusive corporate bookmaker agreement with William Hill.
- 215 When negotiating with peak racing bodies for media rights, Sky Racing seeks to acquire both domestic and international rights. It considers that acquiring both sets of rights is the most commercially attractive option and, given the infrastructure needed to supply vision overseas, most rights holders tend to agree. While Tabcorp seeks to acquire both domestic and international rights, some racing clubs (e.g. the Melbourne Racing Club and Victoria Racing Club) have sought to deal directly with overseas buyers.
- 216 Sky Racing does not schedule the dates on which race meetings are held. Rather, racing bodies dictate their chosen race dates to Sky Racing. Sky Racing is involved in scheduling race broadcasting times which is a complex and difficult process involving a range of factors. Foremost of these is the fact that the two largest racing bodies, Racing Victoria and Racing NSW, select their race start times and dictate these to Sky Racing. Sky Racing then schedules the remaining races around these NSW and Victorian races. Sky Racing1 is the most popular channel which drives the scheduling process. Sky Racing2 was added to provide additional broadcasting capability and, as a result, it is rare for a race in respect of which Sky Racing holds the rights not to be broadcast at all.
- 217 In scheduling race times across Sky Racing1 and Sky Racing2, the principal objective is to seek to generate an optimal wagering outcome for all stakeholders. As a result, higher quality races which attract more wagering tend to be scheduled at peak times. Where there are scheduling overlaps, if the quality of the race is not as high, it is more likely to be shown on Sky Racing2.
- 218 Ultimately, in scheduling race times, Sky Racing seeks to balance the objectives of the various stakeholders involved, and to coordinate programming across its Sky Racing channels so that an optimal wagering outcome is achieved. To do otherwise would damage Sky Racing's relationships with racing bodies, and have a negative impact on wagering to the detriment of Sky Racing as a vision provider, Tabcorp as a wagering operator, and racing bodies as entities principally funded through wagering.
- 219 The racing bodies have demonstrated their capacity to bypass Sky Racing in relation to broadcasting rights through the establishment of the Racing.com joint venture between Seven West Media and Racing Victoria. Prior to forming the joint venture, Racing

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Victoria's and Racing NSW's media rights were managed by TVN. Racing.com is a free to air television channel that is dedicated to broadcasting Victorian thoroughbred racing exclusively. It also broadcasts coverage of Hong Kong Jockey Club races and ten premium New Zealand race meetings. Its broadcast can be viewed online (on its website and apps) or on free-to-air digital television and on Foxtel. Racing Victoria has partly funded the entity that operates Racing.com. Racing.com also publishes 'Best Bets' which is a racing form publication.

- 220 Sportsbet, CrownBet and Ladbrokes hold the rights to live stream all Victorian races to their account holders within Australia and Racing.com streams both within and outside Australia. As set out above, William Hill holds the rights to live stream certain New South Wales races to their accounts holders.
- 221 Seven West Media also broadcasts top-level Victorian, New South Wales, Queensland, Western Australian, South Australian and international Saturday race meets on its signature free-to-air television station, Channel 7. Key meets include:
- (a) Flemington Spring Racing Carnival (Melbourne Cup, Derby Day, Oaks Day and Stakes Day);
 - (b) Cox Plate;
 - (c) Caulfield Cup;
 - (d) Royal Ascot;
 - (e) The Championships;
 - (f) Golden Slipper Carnival; and
 - (g) Magic Millions Carnival.
- 222 Given the various distribution channels, there are a number of alternative providers of racing vision.
- 223 **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
It is my understanding that Sky Racing2 is not currently broadcast in all of Tatts' retail venues.
- 224 If, following the proposed acquisition of Tatts, the peak racing bodies determined to sell their rights to an alternative vision provider, Tabcorp would, in the first instance, seek to acquire a sub-licence to supply the relevant racing vision on its Sky Racing channels. If that were not possible, Tabcorp would seek to acquire vision for its own agencies and,

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as is the case today, it would not prevent licensed venues from acquiring vision directly from an alternative vision provider.

D.2. Sky Sports Radio

225 Tabcorp also owns and operates Sky Sports Radio, which broadcasts into New South Wales and the Australian Capital Territory. Sky Sports Radio is also available nationally online.

226 Sky Sports Radio broadcasts a range of sporting and racing shows, which contain commentary and analysis, as well as live racing commentary.

E. RACING INDUSTRY FUNDING OBLIGATIONS, RACE FIELD FEES AND SPORTING BODY FEES

227 In FY16, Tabcorp paid more than \$1.2 billion in taxes and racing industry funding which comprised of approximately \$428.6 million in taxes on gambling, \$331.2 million in contributions to the Victorian racing industry, \$290.8 million in contributions to the New South Wales racing industry, race field fees of \$94.8 million, broadcast rights and international contributions of \$70.1 million and income taxes paid and payable of \$61.4 million. These figures were recorded in Tabcorp's 2015/2016 Annual Report at **Tab 21 of DF-1 [TBP.011.001.0117]** at **[.0128]**). In Tabcorp's FY17 half year results, it was reported that Tabcorp's total returns to the racing industry were \$430.7 million, up 4.2%, comprising of \$176.2 million in contributions to the Victorian racing industry, \$163.2 million in contributions to the New South Wales racing industry, race field fees of \$53.9 million and media and international contributions of \$37.4 million. In addition, the state and territory gambling taxes and goods and services tax paid by Tabcorp during this period was \$214.4 million. These figures were recorded in Tabcorp's FY17 half year results at **Tabs 62 and 63 of DF-1 [TBP.001.018.6116]** and **[TBP.001.018.6139]**. As I described above, state racing bodies and State TABs have a mutually dependent relationship because State TABs are dependent on the racing bodies to produce a quality racing product to drive wagering, and the racing bodies receive a share of the State TABs' revenue, which enables them to provide a more attractive racing product. Because the racing industry supplies the product that is necessary for State TABs and bookmakers to operate, the industry's controlling bodies are able to exercise a measure of control over the entities that provide wagering services. The activities of the State TABs in each state and territory are limited by the arrangements with the racing industry in that jurisdiction, which require the relevant State TAB to return a significant portion of its revenue to the industry.

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228 Wagering operators pay various fees to different stakeholders including:

- (a) racing industry funding obligations (primarily contributed by State TABs through product fees and state TAB racing payments under their licence obligations and racing industry agreements);
- (b) race field fees (contributed by State TABs, corporate bookmakers and Betfair);
- (c) sporting body fees and commissions (contributed by both State TABs, corporate bookmakers and Betfair); and
- (d) agency fees and commissions (paid by State TABs).

E.1. Racing industry funding obligations

229 Tabcorp's contributions to the racing industries in the states and territory in which it is the State TAB are significant.

230 Tabcorp's Victorian racing industry funding obligations include the following:

- (a) Under the current JVA, VicRacing currently receives:
 - i 50% of profit from Victorian wagering operations (clause 2.4 and 2.6(a)(v)); and
 - ii **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- (b) Under the Racing Information Agreement, Tabcorp provides **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED];
- (c) Under the Racing Program Agreement, Tabcorp and VicRacing as joint venturers pay Racing Products Victoria **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED];
- (d) Under the PGI Customer Agreement FY17, **[HIGHLY Confidential to Tabcorp]**
[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]; and

- (e) Under the Premium Customer Agreement (Aust) FY17, **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED].

231 In total, under these arrangements, the Victorian Racing Industry received the sum of \$331.2 million from Tabcorp in FY16 (as reported in Tabcorp's Annual Report at **Tab 21** of **DF-1 [TBP.011.001.0117]** at **[.0128]**).

232 Tabcorp's New South Wales racing industry funding obligations include the following:

- (a) Under the NSW Racing Distribution Agreement (as amended), TAB Limited pays the New South Wales racing industry certain fees including:

- i **Fixed Product Fee:** base of **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]. In FY16, Tabcorp paid **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED];

- ii **Product Fee:** **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED];

- iii **Fixed Odds Product Fee:** **[HIGHLY Confidential to Tabcorp]**
[REDACTED];

- iv **Wagering Incentive Fee:** **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]; and

- v **Payable Trackside Wagering Incentive Fee:** **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

- (b) Under the PGI Product Fee Agreement, **[HIGHLY Confidential to Tabcorp]**
[REDACTED]
[REDACTED]

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[REDACTED]

[REDACTED];

(c) Under the Sixth RDA Amending Agreement dated 22 October 2013, **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];

(d) Under the HRNSW Sponsorship Agreement between Harness Racing NSW (HRNSW) and TAB Limited dated 1 September 2011 (as varied and extended by agreement on 17 January 2017) **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]; and

(e) Under a Corporate Sponsorship Agreement between TAB Limited and the Australian Turf Club Limited **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

233 In total, the New South Wales Racing Industry received the sum of \$290.8 million from Tabcorp's industry agreement payments in FY16 (as reported in Tabcorp's 2015/2016 Annual Report at **Tab 21** of **DF-1 [TBP.011.001.0117]** at **[.0128]**). Between 2016 to 2019, this contribution will increase as tax parity provisions apply.

234 Tabcorp's Australian Capital Territory funding obligations are contained in the Industry and Community Support Deed. Pursuant to that deed, **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

E.2. Race field fees

235 As I mentioned above, each state and territory in Australia has implemented race fields arrangements, in which each state or territory or its racing industry charges all wagering operators product fees for use of that industry's race field information (or otherwise

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charges fees in respect of the operator's race betting operations in that state or territory). The conditions for the use of race field information vary between each state and territory. For example, under section 32A of the *Betting and Racing Act 1998* (NSW), the use of NSW race field information includes publishing any race field information, communicating any race field information to a person, acknowledging or confirming any race field information communicated to that person or making a written or electronic record (such as a betting ticket, statement of account or notice) that contains or refers to any race field information. In Victoria, under section 4.2.3A of the *Gambling Regulations Act 2003* (Vic), a wagering operator must not publish, cause to be published, use or otherwise make available a race field in the course of business unless it has obtained the relevant approval and complied with the conditions of the racing industry body (which includes the payment of race field fees).

236 The race field fees payable vary across jurisdictions and codes, and are calculated by reference to turnover, gross revenue, or a hybrid of both. Payments made under race fields arrangements are smaller in comparison to the payments made by Tabcorp under its licensing arrangements with state-based racing industries. Accordingly, corporate bookmakers' financial contributions to the racing industry through payment of race field fees are small (as a proportion of their revenue) compared to the significant contributions made by Tabcorp which includes both racing industry contributions in addition to race field fees.

237 **Figure 23** below summarises the race field fees payable by wagering operators to the racing industry for use of the race field information.

State	Thoroughbred	Harness	Greyhounds
New South Wales	<ul style="list-style-type: none"> - 1st \$5m turnover: 1% fee on turnover - \$5m+ Standard Race Meetings (Fixed odds and Tote odds): 1.5% - \$5m+ Standard Race Meetings (Tote derived odds): 2.5% - \$5m+ Premium Race Meetings (Fixed odds and Tote odds): 2.5% - \$5m+ Premium Race Meetings (Tote derived odds): 3.0% 	<ul style="list-style-type: none"> - Premium Race Meeting (fixed odds & tote odds): 2.5% of net harness turnover - Premium Race Meeting (tote derived odds): 3.0% of net harness turnover - Standard Race Meeting (fixed odds and tote odds): 1.5% of net harness turnover - Standard Race Meeting (tote derived odds): 2.5% of net harness turnover 	<p>Subject to the below cap, greater of:</p> <ul style="list-style-type: none"> - (i) 15% of gross margin on fixed odds, tote derived odds and tote odds; or - (ii) 1% of NSW Greyhound Turnover in connection with all NSW Greyhound Races. <p>Fee is capped at:</p> <ul style="list-style-type: none"> - (i) 4% of tote derived turnover; - (ii) 2.5% of fixed odds turnover; and - (iii) 2.5% of tote odds

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			turnover.
Victoria	<ul style="list-style-type: none"> - 1st \$5m turnover: 1% fee of Assessable Turnover - \$5m+ Standard Meetings (Tote): 1.5% of Assessable Turnover - \$5m+ Group / Listed Meetings (Tote): 2.0% of Assessable Turnover - \$5m+ Premier Meetings (Tote): 2.5% of Assessable Turnover - \$5m+ Standard Meetings (Non-Tote): greater of 1.5% of Assessable Turnover or 15% of Gross Revenue - \$5m+ Group / Listed Meetings (Non-Tote): greater of 2.0% of Assessable Turnover or 20% of Gross Revenue - \$5m+ Premier Meetings (Non-Tote): greater of 3.0% of Assessable Turnover or 30% of Gross Revenue - \$5m+ all Race Meetings (Betting Exchange): 40% of Gross Revenue 	<ul style="list-style-type: none"> - 1st \$100,000 (per month): 1% of assessable turnover - \$100K+ (Tote): 2% of assessable turnover - \$100K+ (Fixed odds): 2.5% of assessable turnover - \$100K+ (tote derivative): 3.0% of assessable turnover. - 1st \$30.5K (Betting Exchange): 0.44% of net customer winnings - \$30.5K+ (Betting Exchange): 1.1% of net customer winnings 	<ul style="list-style-type: none"> - Tote: 1.5% of Eligible Turnover - Non-Tote (including fixed odds, exchange, tote derivatives): 2.0% of Eligible Turnover
Australian Capital Territory	1.5% of assessable turnover on all race meetings (except for Black Opal Thoroughbred Stakes, which is paid at 2% of assessable turnover).		
Northern Territory	<ul style="list-style-type: none"> - \$500K+: 1.5% of turnover from all betting transactions relating to NT thoroughbred races. 	N/A	<ul style="list-style-type: none"> - 1.5% of turnover from all betting transactions relating to NT greyhounds races.
Queensland	<ul style="list-style-type: none"> - 1st \$5m turnover (all codes aggregated): 1.5% of turnover (tote and all other types), 35% of net revenue (betting exchange) <p>Thoroughbred Standard Race Meeting (per month):</p> <ul style="list-style-type: none"> - 1.75% of turnover (tote) - Greater of 20% of net revenue or 1.75% of turnover (all other types) - 35% of net revenue (betting exchange) <p>Thoroughbred Premium Race Meeting (per race)</p>	<ul style="list-style-type: none"> - 1st \$5m turnover (all codes aggregated): 1.5% of turnover (tote and all other types), 35% of net revenue (betting exchange) <p>Harness Standard Race Meetings (per month):</p> <ul style="list-style-type: none"> - 1.75% of turnover (tote) - Greater of 20% of net revenue or 1.75% of turnover (all other types) - 35% of net revenue (betting exchange) 	<ul style="list-style-type: none"> - 1st \$5m turnover (all codes aggregated): 1.5% of turnover (tote and all other types), 35% of net revenue (betting exchange) <p>Greyhound Standard Race Meetings (per month):</p> <ul style="list-style-type: none"> - 1.75% of turnover (tote) - Greater of 20% of net revenue or 1.75% of turnover (all other types) - 35% of net revenue (betting exchange)

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	<p>meeting):</p> <ul style="list-style-type: none"> - 2.50% of turnover (tote) - Greater of 30% of net revenue or 2.50% of turnover (all other types) - 35% of net revenue (betting exchange) 		
South Australia	<p>Premium Meeting (All types excluding Betting Exchange): greater of the following:</p> <ul style="list-style-type: none"> - (i) 2.5% of monthly turnover; or - (ii) 20% of Monthly Gross Proceeds. <p>Non-Premium Meeting (All types excluding Betting Exchange): 1.0% of Monthly Turnover (up to \$83,333) plus the greater of the following:</p> <ul style="list-style-type: none"> - (i) 2.0% of monthly turnover between \$83,333 and \$7.5m plus 1.5% of monthly turnover in excess of \$7.5m; or - (ii) 15% of Monthly Gross Proceeds between \$83,333 and \$7.5m plus 10% of Monthly Gross Proceeds in excess of \$7.5m. - Betting Exchange (Non-Premium Meeting): greater of 20% of Monthly Gross Proceeds; or 1.0% of Net Customer Winnings. - Betting Exchange (Premium Meeting): greater of 25% of Monthly Gross Proceeds; or 1.5% of Net Customer Winnings. 	<p>Premium Meeting: greater of the following:</p> <ul style="list-style-type: none"> - (i) 2.0% on totes, fixed odds or betting exchange turnover, plus 2.5% of "Other Bet Type" turnover; or - (ii) 18% of Monthly Gross Proceeds <p>Non-Premium Meeting: greater of the following:</p> <ul style="list-style-type: none"> - (i) 2.0% on totes, fixed odds or betting exchange turnover, plus 2.5% of "Other Bet Type" turnover; or - (ii) 15% of Monthly Gross Proceeds 	<p>Premium Meeting (All types excl. Betting Exchange): greater of the following:</p> <ul style="list-style-type: none"> - (i) 2.5% of monthly turnover; or - (ii) 18% of Monthly Gross Proceeds (up to a monetary threshold*), plus 10% of the Gross Monthly Gross Proceeds beyond that monetary threshold. <p>Non-Premium Meeting (All types excl. Betting Exchange): greater of the following:</p> <ul style="list-style-type: none"> - (i) 2.0% of monthly turnover; or - (ii) 15% of Monthly Gross Proceeds (up to a monetary threshold**), plus 10% of the Gross Monthly Gross Proceeds beyond that monetary threshold. - Betting Exchange: 1.5% of Net Customer Winnings. - * Premium Monetary Threshold: August (\$800K), September (\$1m), October (\$400K). - ** Non-Premium Monetary thresholds: August (\$200K), September (\$0), October (\$600K), all other months (\$1m).
Tasmania	<p>If Net Turnover (for month) is less than \$83,333, nil amount payable.</p> <p>For Net Turnover greater than \$83,333:</p> <ul style="list-style-type: none"> - Tote: 1.5% of Net Turnover and additional 0.5% for thoroughbred Tasmanian Races conducted in February. - Betting exchange: 1.0% of net turnover. 		

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	<ul style="list-style-type: none"> - Other (e.g. fixed odds): greater of: - (i) 1.0% of Net Turnover; or - (ii) aggregate of 20% of Net Revenue and additional 5% for thoroughbred Tasmanian Races conducted in February. <p>If the amounts calculated in accordance with the above exceed \$100,000 for the month, 5% of the excess amount beyond \$100,000 is deducted from overall Race Field Information Publication fees payable.</p>
Western Australia	<ul style="list-style-type: none"> - 1st \$3m: 1% of turnover. - Standard Meeting (Tote & Betting Exchange): 1.5% - Premium Meeting (Tote & Betting Exchange): 2.5% - Standard Meeting (Fixed Odds): 2.0% - Premium Meeting (Fixed Odds): 3.0% - Note that if turnover does not exceed \$1,000, nil amount is payable.

Figure 23: Race field fees in each state and territory by racing code

E.3. Sporting body fees

238 Under the *Gambling Regulation Act 2003* (Vic) and *Betting and Racing Act 1998* (NSW), wagering operators must obtain the agreement of certain sports controlling bodies and pay fees under those agreements. My understanding is that all wagering operators would have commercial arrangements with the relevant sports controlling bodies to pay sporting body fees, pursuant to these legislative requirements. Wagering operators pay sporting body fees to promote fair information and revenue sharing between them and sports controlling bodies. This is achieved by approving sporting and other non-racing events for betting purposes, enabling sporting organisations to apply to be approved as the sports controlling body for betting purposes on their sport and ensuring prohibitions are available for particular contingencies that may be considered inappropriate for betting purposes.

239 **Figure 24** below summarises the sporting body fees payable under Tabcorp's agreements with sports controlling bodies in New South Wales, Victoria and the Australian Capital Territory.

[HIGHLY Confidential to Tabcorp]

Sports controlling bodies	Fee
[REDACTED]	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]

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

Figure 24: Tabcorp's sporting body fees

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F. COMMISSIONS AND TAXES

F.1. Commissions

240 As a retail operator, Tabcorp pays commissions to its agencies and licensed venues in New South Wales, Victoria and the Australian Capital Territory. The commission rates are set out in the agreements between Tabcorp and each individual agency or licensed venue. Corporate bookmakers do not incur these costs as they do not operate retail outlets.

241 I set out below **Figure 25** a table summarising the retail venue commissions payable by Tabcorp to its agencies and licensed venues in New South Wales and Victoria and at **Figure 26** a table summarising the retail venue commissions payable by Tabcorp to its agencies and licensed venues in the Australian Capital Territory. The commission rates differ depending on the venue standard which is categorised by average wagering turnover and other factors. For example, 'Platinum' venues have the highest turnover and 'Bronze' venues have the lowest turnover and a 'Kiosk' offers less than the full TAB offering. The commission rates provided below are payable on turnover.

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State	Standard	Standard Name	Commission	% of TAB retail network
New South Wales	Agency	Agency	■	■
	NLVSTD	Standard	■	■
	NLVEXP	Express	■	■
	NKIOSK	Kiosk	■	■
	NLVBRA	Bronze A	■	■
	NLVBRB	Bronze B	■	■
	NLVBRC	Bronze C	■	■
	NLVSIA	Silver A	■	■
	NLVSIB	Silver B	■	■
	NLVSIC	Silver C	■	■

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State	Standard	Standard Name	Commission	% of TAB retail network
	NLVSPPLUS	Silver Plus	█	█
	NLVGOA	Gold A	█	█
	NLVGOB	Gold B	█	█
	NLVGOC	Gold C	█	█
	NLVGPLUS	Gold Plus	█	█
	NLVPLT	Platinum	█	█
	NLVPPLUS	Platinum Plus	█	█
Victoria	Agency	Agency	█	█
	VKIOSK	Kiosk	█	█
	VLVEXP	Express	█	█
	VLVBRD	Bronze D	█	█
	VLVBRC	Bronze C	█	█
	VLVBRB	Bronze B	█	█
	VLVBRA	Bronze A	█	█
	VLVSIC	Silver C	█	█
	VLVSIB	Silver B	█	█
	VLVSIA	Silver A	█	█
	VLVSPLUS	Silver Plus	█	█
	VLVGOD	Gold D	█	█
	VLVGOC	Gold C	█	█
	VLVGOB	Gold B	█	█
	VLVGOA	Gold A	█	█

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State	Standard	Standard Name	Commission	% of TAB retail network
	VLVPLT	Platinum	█	█
	VLVPPLUS	Platinum Plus	█	█
		Blended Average	█	

Figure 25: retail venue commissions payable by Tabcorp to its New South Wales and Victorian agencies

Tier	A – Under \$100k annual wagering turnover	B – Over \$100k annual wagering turnover
█	█	█
█	█	█
█	█	█

Figure 26: retail venue commissions payable by Tabcorp to its Australian Capital Territory agencies

242 Tabcorp provides its New South Wales Agents and Victorian Agents a variable agency commission which depends on the wager type upon which bets are placed. I set out at **Figure 27** and **Figure 28** below the commission rate for Tabcorp’s NSW and at Victorian Agents below. **[Confidential to Tabcorp]**

Wager type	Commission rate (NSW)
█	█
█	█
█	█
█ █	█
█ █ █ █	█

Figure 27: Variable agency commission rate- NSW

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Wager type	Commission rate (Victoria)
██████████	████
██████████	████
██	████
██████████	████

Figure 28: Variable agency commission rate – Victoria

243 I set out at **Tab 12 of DF-2 [TBP.001.018.4601]** a spreadsheet which provides the details of all Tabcorp retail wagering venues in Australia, including the location, type of venue and venue standard.

F.2. Taxes

244 As noted above, each state and territory regulates the amount of wagering tax to be paid by wagering operators. Wagering operators are also subject to payment of goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

245 In the jurisdictions in which Tabcorp operates, totalisator tax and fixed odds tax is payable under the following legislation:

- (a) **New South Wales:** *Betting Tax Act 2001* (NSW);
- (b) **Victoria:** *Gambling Regulation Act 2003* (Vic);
- (c) **Australian Capital Territory:** *Race and Sports Booking Act 2011* (ACT), *Race and Sports Bookmaking (Tax Rates) Determination 2007 (No 1)* and *Totalisator (Licence Fee) Determination 2014 (No 1)*; and
- (d) **Northern Territory:** *Racing and Betting Act* (NT) and *Totalisator Licensing and Regulation Regulations* (NT).

246 Tabcorp paid \$188.3 million in state and territory wagering taxes in FY16 pursuant to the legislative framework set out above.

247 I set out at **Figure 29 – 32** below a summary of the relevant wagering taxes that are applicable in these jurisdictions.

Wagering tax applicable in New South Wales		
Applicable time period	Totalisator tax	Fixed odds tax

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Wagering tax applicable in New South Wales		
1 July 2015 – 30 June 2016	16.2% of commission	9.2% of 'net earnings**'
1 July 2016 – 30 June 2018	13.5% of commission	7.43% of 'net earnings**'
1 July 2018 - 30 June 2019	12.17% of commission	6.6% of 'net earnings**'
1 July 2019 - 30 June 2020	10.7% of commission	5.8% of 'net earnings**'
1 July 2020 onwards	7.6% of commission	4.38% of 'net earnings**'
Ongoing (for simulated racing event betting such as Trackside)	N/A	10.91% of 'net earnings**'
*Net earnings is the difference between total bets received, and total dividends or other sums paid to customers.		

Figure 29: Wagering tax applicable in New South Wales

Wagering tax applicable in Victoria	
Totalisator tax	Fixed odds tax
7.6% of commission	4.38% of 'net investment**' for racing and sports 10.91% of 'net investment**' for simulated racing
*Net investment is the difference between total bets received, and the total amount paid out to customers as winnings	

Figure 30: Wagering tax applicable in Victoria

Wagering tax applicable in the Australian Capital Territory	
Totalisator tax	Fixed odds tax*
\$1 million totalisator licence fee in 2014, indexed to CPI for each subsequent year	0.25% of events set out in the Schedule For fixed odds betting on events where the number of possible outcomes is 4 or less:

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Wagering tax applicable in the Australian Capital Territory	
	<ul style="list-style-type: none"> - 0.50% of bookmaker turnover where number of possible outcomes is four or less, and when turnover is less than \$15 million - 0.17% of bookmaker turnover where number of possible outcomes is four or less, and when turnover is greater than \$15 million <p>For all other fixed odds betting:</p> <ul style="list-style-type: none"> - 1% of bookmaker turnover on all fixed odds betting when turnover is less than \$40 million - 0.60% of bookmaker turnover on all fixed odds betting when turnover is greater than \$40 million - 6.75% of the bookmaker's turnover on spread betting transactions - 6.00% of the bookmaker's turnover on pari-mutuel sports betting transactions <p>In relation to Trackside, Tabcorp makes a monthly payment to the Australian Capital Territory Gambling and Racing Commission of 2.5% (exclusive of GST) of the total amount paid by subscribers to the Trackside in respect of the preceding month exclusive of GST.</p> <p>*Note: Tabcorp is entitled to claim an offset of GST paid for the respective fixed odds bets in the Australian Capital Territory which affects the rate of fixed odds tax actually paid.</p>

Figure 31: Wagering tax applicable in the Australian Capital Territory

Wagering tax applicable in the Northern Territory	
Totalisator tax	Fixed odds tax
<p>40% of commission for thoroughbred, harness and greyhound racing</p> <p>20% of commission for other sports</p> <p>10% of commission for other sports when bet placed outside Australia</p>	<p>0.33% of the monthly amount (as defined in section 106(3)(a) of the <i>Racing and Betting Act</i>) for a registered bookmaker or country bookmaker</p> <p>10% of gross profit for a sports bookmaker (total capped at 500,000 revenue units which is currently \$575,000)</p>

Figure 32: Wagering tax applicable in the Northern Territory

Confidential Restriction on Publication Claimed**G. RECENT TRENDS IN WAGERING INDUSTRY****G.1. Overview**

248 The last decade has seen significant changes occurring in the Australian wagering industry and the competitive wagering landscape. The wagering market is continuing to experience significant structural changes in both products and channels. Over the past ten years, fixed odds racing and sports wagering has grown from 26% to 63% of industry turnover. The industry has also seen rapid digital convergence over the past 5 years with digital (wagering online via website or apps) increasing from 30% to 51% of industry turnover. Channel convergence is occurring at a rapid pace in key global markets including Australia with all key markets experiencing a rapid uptake of mobile-based online betting. Competition has increased from corporate bookmakers who have doubled their turnover in the last five years and now command more than \$12 billion in national turnover (representing approximately 40 percent of the Australian wagering market). These trends are recorded in Tabcorp's September 2016 Board Paper at **Tab 1 of DF-3 [TBP.003.001.0725]**.

249 As Executive General Manager of Commercial Development, I have spent a significant amount of time getting to know and understanding our wagering business and the environment it operates in. Part of my role involves developing strategies for future growth opportunities, which necessitates that I pay close attention to wagering industry trends and the activities of Tabcorp's competitors. I have observed the following key trends in the current Australian wagering industry (each of which I discuss in more detail below):

- (a) **Channel convergence and substitution from retail to digital:** Customers have increasingly moved to digital wagering (online via websites and apps) and away from placing bets in cash at retail venues. This has been linked to the growth of corporate bookmakers, most of whom offer digital services. Customers now typically have multiple accounts and regularly wager with a number of wagering operators, and customer brand loyalty has decreased;
- (b) **Shift from totalisator to fixed odds betting:** totalisator wagering has declined, driven by customer substitution to fixed odds products, both in absolute terms and as a percentage of total wagering turnover;
- (c) **Substitution away from racing to sports:** wagering on sports other than racing continues to capture turnover share from racing; and

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- (d) **Significant growth of corporate bookmakers:** corporate bookmakers have continued to grow and consolidate, doubling their turnover over the past 5 years and increasing competition in the wagering market.

250 This period of profound change has resulted from, in particular:

- (a) the growth and widespread use of smartphone and apps which has increased online wagering services and digital offerings;
- (b) the removal of historical advertising restrictions arising from the *Betfair* decision in 2008 (as I described above); and
- (c) a favourable regulatory environment for corporate bookmakers licensed in the Northern Territory (as I described above).

251 In this section G, I explain how these trends have impacted the wagering industry and Tabcorp's business.

G.2. Channel convergence

252 Prior to 2008, it was unclear whether a wagering operator could advertise to customers in other states over the internet or by telephone without contravening the relevant legislation and regulations governing the provision of retail wagering services in each state and territory.

253 Then, in 2008, the High Court handed down its decision in the *Betfair* case which brought about a significant change in the industry – whereas state and territory regulations previously meant that State TABs generally competed only with a small number of licensed bookmakers in each state or territory, today State TABs compete against interstate operators that accept bets over the telephone or internet. These interstate operators include corporate bookmakers (most of which are based in the Northern Territory) and, to a lesser extent, betting exchanges and other State TABs. Online wagering (principally through mobile devices) has experienced strong growth in Australia over the last decade. In addition to the changed regulatory environment outlined above, there are many other reasons for this, including:

- (a) convenience and speed (including reducing the chance of missing out on placing bets close to the start of an event);
- (b) opportunity to shop around by checking various websites and apps before placing a bet;

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- (c) customers becoming more comfortable with electronic money transfers and the use of credit card payments online;
- (d) the use of apps to place bets increasing in line with the popularity of smart phones since the Apple iPhone was first released in 2007;
- (e) large scale national advertising campaigns, particularly by corporate bookmakers;
- (f) the attractiveness of promotional offers offered in the market; and
- (g) customers, particularly those from a younger demographic, embracing technology.

254 Between FY06 and FY15, there has been a significant shift in the utilisation of online and phone wagering channels corresponding with a decline in retail wagering in the industry. Tabcorp's September 2016 Board Paper at **Tab 1 of DF-3 [TBP.003.001.0725]** at **[.0752]** records that:

- (a) between FY06 and FY15, online wagering grew from 12% to 51% of total industry wagering turnover between FY06 and FY15; and
- (b) in FY06, retail facilities accounted for 54% of wagering turnover. By FY15, this declined to just 33%.

255 Tabcorp estimates that by 2020, retail channels will decline to account for just **[Confidential to Tabcorp]** of the industry's turnover (down from **[Confidential to Tabcorp]** in FY01), while digital channels will increase to reflect **[Confidential to Tabcorp]** of the industry's turnover (up from **[Confidential to Tabcorp]** in FY01). I set out at **Figure 33** below Tabcorp's analysis of historical trends that sets out this estimate. I set out at **Figure 34** below a table reflecting the underlying data for **Table 34** based on industry turnover by channel and premium customers for each year from FY06 – FY15 (in \$billion).

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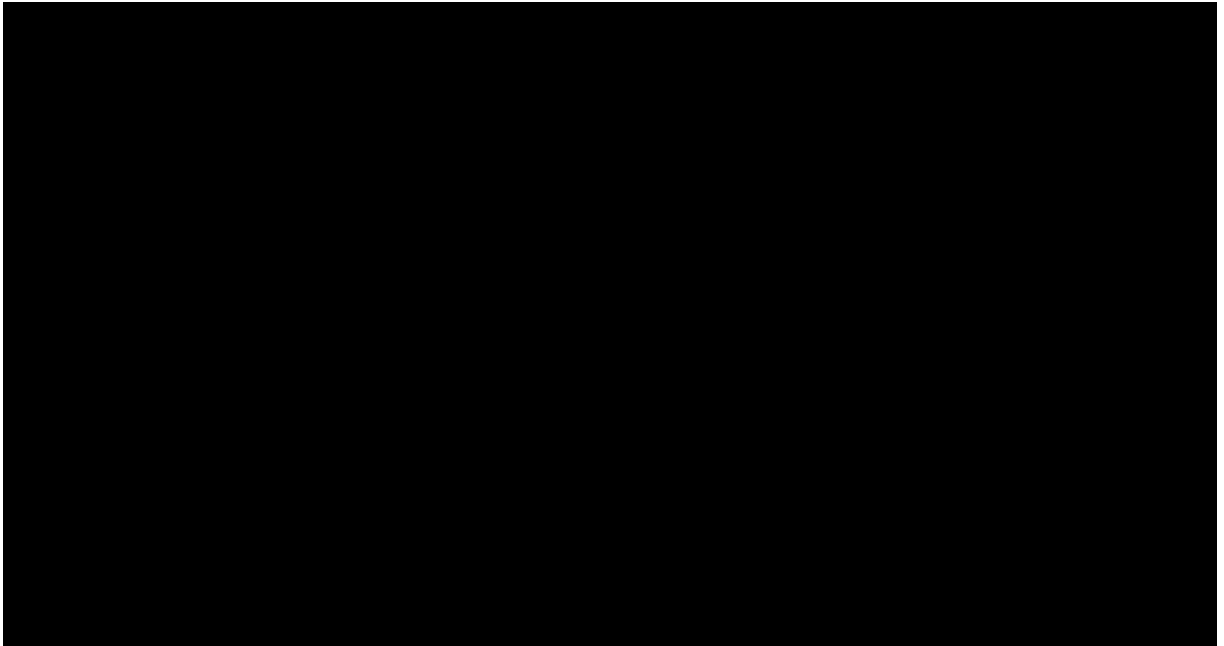


Figure 33: Estimates of wagering industry turnover by channel (2001 – 2020)

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Channel	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
Digital	■	■	■	■	■	■	■	■	■	■
Phone	■	■	■	■	■	■	■	■	■	■
On-course	■	■	■	■	■	■	■	■	■	■
Premium	■	■	■	■	■	■	■	■	■	■
Retail	■	■	■	■	■	■	■	■	■	■
Total	■	■	■	■	■	■	■	■	■	■

Figure 34: Industry wagering turnover by distribution channel and premium customers, FY2006 – FY2015 (in \$billion)

256 The decline in retail wagering has been accompanied by a decline in customer loyalty. Customers can now place bets on a variety of devices including smart phones and tablet devices and can place bets with a range of wagering operators through those devices, even when they are physically located at TAB retail venues. Customers can and do wager on those devices using more than one wagering provider. As highlighted in Figure 19 at paragraph 181 above, the number of brands of wagering apps used on those devices is indicative of the extent to which they use more than one wagering operator's

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services. In 2015, customers using digital devices to place bets had an average of over 2 wagering operator brands in use.

257 I set out at **Figure 35** a table showing the proportion of bets placed by Tabcorp customers (excluding cash customers) in the last 2 years by device type (taken from a Tabcorp internal paper at **Tab 44** of **DF-3 [TBP.003.001.0941]**). This shows that betting via mobile platforms on Tabcorp's iPhone and Android apps has increased **[Confidential to Tabcorp]** % in the last 2 years.

[Confidential to Tabcorp]

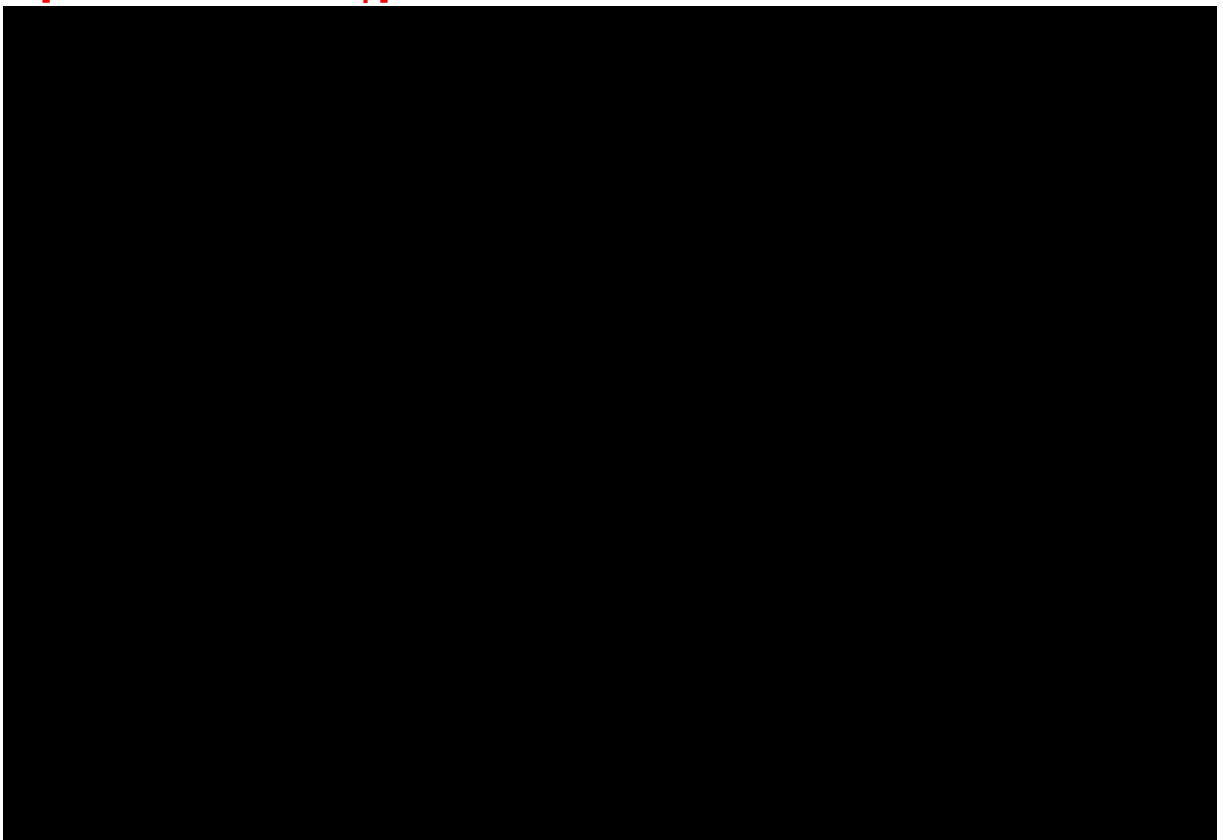


Figure 35: Proportion of bets placed by channel (among Tabcorp account customers) – 2014 – 2016

258 Major corporate bookmakers have seen a strong growth in the number of customer account holders. I set out at **Figure 36** below a table showing this trend (taken from Tabcorp's September 2016 Board Paper at **Tab 1** of **DF-3 [TBP.003.001.0725]** at **[.0757]**). This analysis was prepared to compare the growth in Tabcorp's number of accounts with that of some of the major corporate bookmakers.

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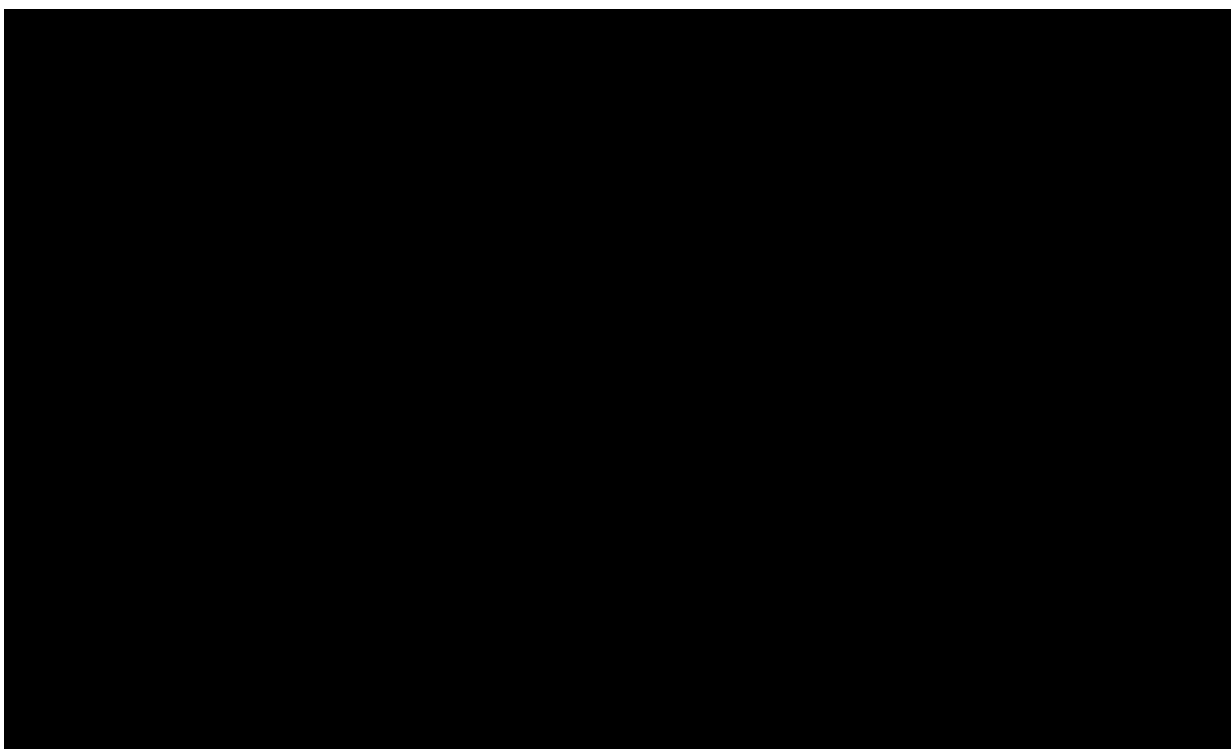


Figure 36: Number of customer account holders for international corporate bookmakers and Tabcorp

259 Reflecting this broader industry trend, Tabcorp's turnover in its retail channel has also been in decline. In the financial year ending FY16, Tabcorp's total turnover in the retail channel was down 1.1% on the previous corresponding period (as reported in Tabcorp's FY16 Annual Report, a copy of which is at **Tab 21** of **DF-1 [TBP.011.001.0117]** at **[.0136]**). Tabcorp's digital channel's compound annual growth rate of **[Confidential to Tabcorp]** [REDACTED] is **[Confidential to Tabcorp]** [REDACTED] broader industry digital channel compound annual growth of **[Confidential to Tabcorp]** [REDACTED] (as shown in **Tab 44** of **DF-3 [TBP.003.001.0941]**). I set out at **Tab 45** of **DF-3 [TBP.001.022.0002]** a spreadsheet recording betting account wagering turnover for each financial year during the period from 2006 to 2016. The first tab marked "Tabcorp" records Tabcorp's betting account turnover by customer location and includes turnover for bets placed using an account online, over the phone or with a self-service terminal in a retail venue. The second tab marked "Tabcorp (Cash Venues)" records bets placed using a betting account in a retail venue using a self-service terminal. The third tab marked "Market" records Tabcorp's estimates of betting account turnover for the Australian wagering industry for each financial year from 2010 to 2015. The "TABs" columns record each State TAB's betting account turnover excluding betting account turnover placed in retail venues with self-service terminals. Luxbet turnover is included in the corporate bookmakers column.

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260 Given that **[Confidential to Tabcorp]** [REDACTED] of Tabcorp's turnover is made up of cash transactions, it is difficult to measure the true size of Tabcorp's retail customer base. However, focussing on Tabcorp's account holders only, it is apparent that Tabcorp's account customer base is growing more slowly than that of several of the major corporate bookmakers. For example:

- (a) In the middle of 2016, Tabcorp had over 430,000 active account holders; and
- (b) Sportsbet, a corporate bookmaker, reported an account holder base of 754,000 at the end of the calendar year 2015.

261 This also accords with Tabcorp's internal estimates of the share of Australian wagering conducted through telephone and internet channels. Across these channels, State TABs have been facing competition from corporate bookmakers. The State TABs' share of total turnover for wagering conducted by telephone and internet has declined in recent years. I set out below in **Figure 37**, data based on Tabcorp's estimates which shows the share of total turnover for Australian wagering conducted through telephone and internet channels for Tabcorp, Tatts, other State TABs (i.e. RWWA), corporate bookmakers, Betfair and other wagering operators in FY12-FY15.

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Figure 37: Share of total turnover for Australian wagering conducted through telephone and internet channels by wagering operator (FY12-FY15)

262 As noted above, customers who are physically located at a TAB retail venue can place bets with a number of different wagering operators through their digital devices. Recently, there have been developments by corporate bookmakers seeking to progress initiatives to compete in those environments. On 7 February 2017, it was announced that CrownBet and ClubsNSW had entered into an agreement under which CrownBet would

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provide digital wagering services to over 1,000 clubs across New South Wales. Under this agreement, Crownbet will invest in Wi-Fi and technology upgrades for clubs across New South Wales and develop an app for club patrons to place bets through CrownBet in competition with physical TAB outlets within the same venues. CrownBet will also expand their loyalty scheme to allow club patrons to redeem their points for offers that are available at particular clubs and install terminals in clubs that provide racing and sports information and betting odds. CrownBet will also enter into revenue sharing arrangements with New South Wales clubs. A copy of a summary of the key terms and conditions of that agreement is at **Tab 64 of DF-1 [TBP.001.020.0259]**. Crownbet CEO Matthew Tripp has indicated that CrownBet may enter into similar agreements with organisations in other states and territories to offer wagering services in venues where customers may congregate. Douglas Flockhart, the Chief Executive Officer of Clubs Queensland, has recently been reported as saying that he sees no merit in a similar deal being implemented in Queensland. I set out a sample of media articles reporting on CrownBet's digital partnership with ClubsNSW at **Tab 65 of DF-1 [TBP.001.027.0001]**.

G.3. Shift from totalisator to fixed odds wagering

263 Since 2006, there has been a trend in the decline of totalisator betting, which has been driven by customer substitution to fixed odds products both in absolute terms and as a percentage of total wagering turnover. Tabcorp's September 2016 Board Paper (at **Tab 1 of DF-3 [TBP.003.001.0725]** at **[.0751]**) notes that:

- (a) between FY06 and the FY15, the percentage of pari-mutuel betting in the industry has fallen from approximately 70% of total turnover (representing \$12.6 billion) to approximately 35% of total turnover (representing \$10.7 billion);
- (b) during this same period, the fixed odds racing turnover in the industry has increased from approximately 20% of total turnover (representing \$3.6 billion) to approximately 42% of total turnover (representing \$12.9 billion); and
- (c) fixed odds sports turnover in the industry has increased from approximately \$1.8 billion (approximately 10% of total wagering turnover) in FY06 to approximately \$6.4 billion (approximately 21% of total wagering turnover) in FY15.

264 In the past 5 years, fixed odds sports and racing wagering has grown from 41% to 63% of industry turnover.

265 Reflecting this industry trend away from totalisator wagering to fixed odds wagering described above, Tabcorp's totalisator revenue has recently been in decline whilst its fixed odds revenue has grown. For example:

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- (a) as reported in Tabcorp's Annual Report for FY16 (at **Tab 21** of **DF-1 [TBP.011.001.0117]**), Tabcorp's revenue in fixed odds wagering grew 16.4% on the previous corresponding period whilst its totalisator revenue declined by 4.4% on the previous corresponding period; and
- (b) as reported in Tabcorp's Annual Report for FY15 (at **Tab 66** of **DF-1 [TBP.011.001.0461]**) in the financial year ending FY15, Tabcorp's revenue in fixed odds revenue was up 33% on the previous corresponding period whilst its totalisator revenue declined by 2.1% on the previous corresponding period.

266 In my opinion, the decline in pari-mutuel wagering is primarily linked to the rise of corporate bookmakers that provide fixed odds products and tote derivative products, often with better odds than those available through a State TAB. I say that because the decline in pari-mutuel betting has closely corresponded with the rise of fixed odds betting, and particularly tote derivative betting, especially since 2006. As explained above, there are now a variety of fixed odds and tote derivative products on offer, many of which provide more attractive odds to customers and on average, provide better payouts to the customer. Fixed odds betting also provides customers with greater certainty of odds. In contrast, with pari-mutuel betting types, as pool sizes decline, the dividends decrease and the pools become more susceptible to being moved significantly by individual bets which makes it less attractive to customers and decreases the liquidity of the pools. Sophisticated customers are less likely to place large bets due to a concern that their own activity will materially affect the odds, and therefore their potential return, creating greater volatility in the odds during the period the pool is open and generally lower odds. This effect gives rise to a spiral of further decline. The tote derivative products offered by the corporate bookmakers, often at the tote price plus a certain percentage, also contributes to a decrease in pool liquidity. By offering tote derivative products, corporate bookmakers not only rely on the underlying pari-mutuel product (without contributing to the costs of creating or maintaining pari-mutuel products), but also contribute to the decline of pool sizes and pari-mutuel products (by offering tote derivative products with better odds).

267 Tabcorp projects that the decline in pari-mutuel wagering will continue in the future. An internal Tabcorp analysis prepared in September 2016 predicts that by 2020:

- (a) pari-mutuel products will decline to represent an estimated **[Confidential to Tabcorp]** of total wagering turnover;

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- (b) fixed odds racing and tote derivative products combined will represent an estimated **[Confidential to Tabcorp]** [REDACTED] of total wagering turnover;
- (c) fixed odds sports products will represent an estimated **[Confidential to Tabcorp]** [REDACTED] of total wagering turnover; and
- (d) Trackside will represent an estimated **[Confidential to Tabcorp]** [REDACTED] of total wagering turnover.

268 A confidential copy of that Board briefing is attached at **Tab 1** of **DF-3 [TBP.003.001.0725]**. I set out below **Figure 38** which is a table contained in that briefing that shows historical wagering turnover by product from FY01 to FY15 and Tabcorp's projected forecast for wagering turnover by product to 2020.

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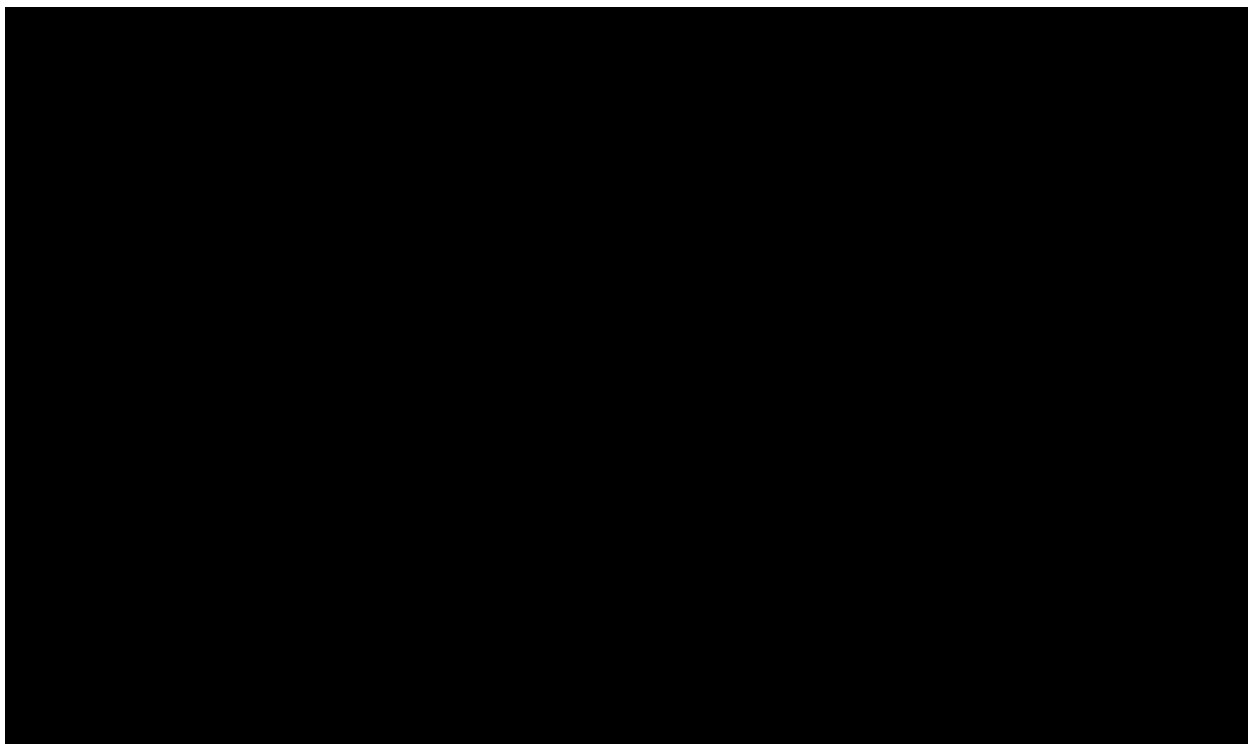


Figure 38: Estimate of turnover of wagering product (2001 – 2015)

269 More recent data suggest that this analysis to 2020 **[Confidential to Tabcorp]** [REDACTED]. In the last several months, there has been a marked decline in pari-mutuel wagering. I set out below at **Figure 39** below an extract taken from Tabcorp's Parimutuel Workshop Reference Data dated 28 November 2016, which was prepared by Tabcorp for representatives of VicRacing (**Tab 13** of **DF-2 [TBP.001.018.6802]**). **[Confidential to Tabcorp]** [REDACTED]

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[Confidential to Tabcorp]

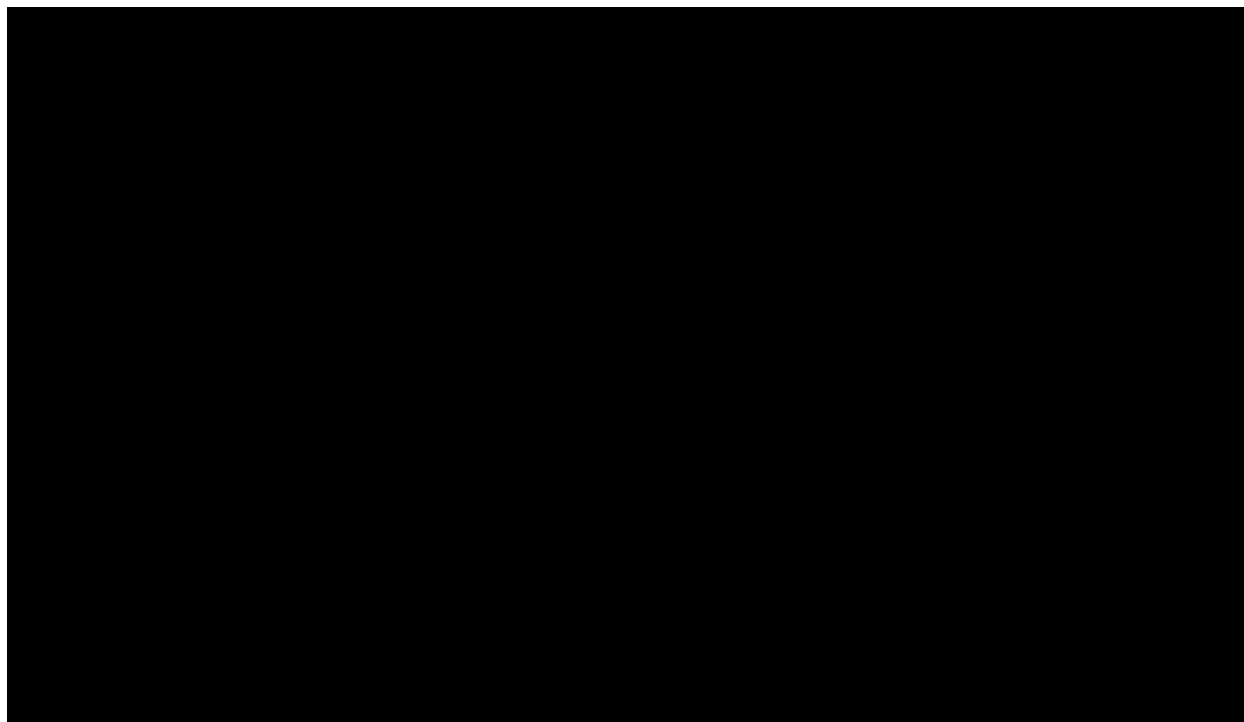


Figure 39: Pari-mutuel turnover from July 2013 to September 2016.



G.4. Product substitution away from racing to sports

270 Over the last few years, there has been an industry-wide increase in wagering on sports betting (i.e. wagering on sports other than racing) with growth at approximately 14% per year since FY06, compared to overall wagering growth on racing of 4% (i.e. thoroughbred, greyhound and harness racing). Similarly, betting on sport has increased from 11% of total national wagering in FY06 to 21% in FY15. This is demonstrated in **Figure 40** below. The data in **Figure 40** has been based on the Racing Fact Books (with adjustments for known errors), information provided by the Northern Territory Racing Commission and Tabcorp estimates.

Turnover \$m		FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	CAGR
TAB's	Racing	12,644	13,317	13,225	14,267	14,551	14,948	15,193	14,902	14,931	15,039	2%
	Sport	704	804	997	1,163	1,434	1,605	1,710	1,628	1,751	1,934	12%
Bookmakers	Racing	3,808	4,712	4,946	5,785	5,920	6,100	6,227	7,239	7,756	8,528	9%
	Sport	1,300	1,502	1,771	1,861	1,973	2,223	2,124	3,164	3,705	4,503	15%
Total	Racing	16,451	18,030	18,171	20,052	20,471	21,048	21,420	22,141	22,687	23,568	4%
	Sport	2,004	2,306	2,768	3,024	3,407	3,827	3,834	4,792	5,456	6,437	14%
Sport % of Total		11%	11%	13%	13%	14%	15%	15%	18%	19%	21%	

Figure 40: Turnover growth on racing and sport for the period from FY06 to FY15



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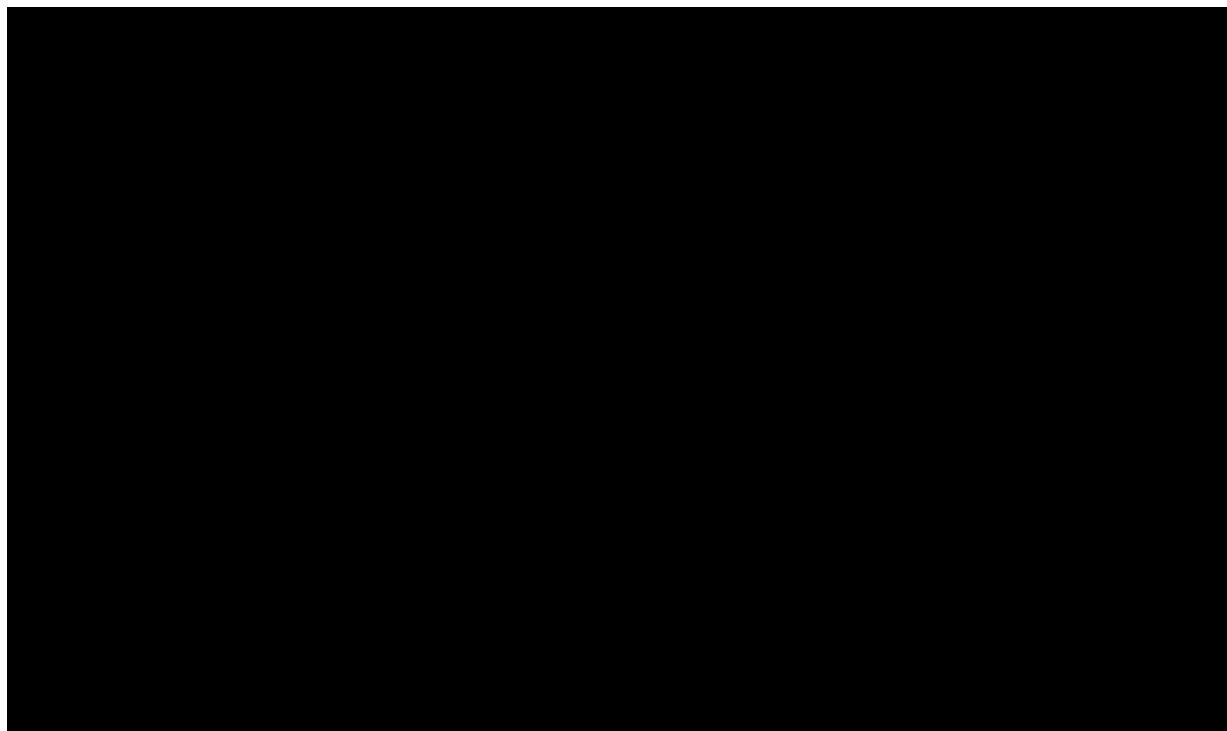
- 271 I set out below in paragraph 283(a)iv, a comparison of the sports betting events offered by corporate bookmakers and Tabcorp in New South Wales and Victoria.
- 272 I set out below at **Figure 41** a summary of Tabcorp's wagering business by codes for the period FY01 to FY16, which reflects the recent growth in fixed odds sports as a proportion of its overall turnover. This records that:
- (a) in FY06, fixed odds sports represented approximately **[Confidential to Tabcorp]**  of Tabcorp's wagering turnover; and
 - (b) by FY16, it had grown to represent approximately **[Confidential to Tabcorp]**  of Tabcorp's wagering turnover.

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Figure 41: Tabcorp's wagering turnover over code (FY01 to FY16)

- 273 Further, the majority of sports betting is fixed odds, rather than pari-mutuel. This is illustrated in **Figure 42** below, which shows that Tabcorp's FY16 consolidated turnover on pari-mutuel sports betting ("FootyTab") was approximately **[Confidential to Tabcorp]**  whereas Tabcorp's fixed odds sports betting in the same period was approximately **[Confidential to Tabcorp]** . As recorded in the 2015/2016 Australian Racing Factbook, the total industry turnover on sports betting in the period August 2015 – 31 July 2016 was approximately \$8.2 billion (**Tab 8 of DF-1 [TBP.015.001.1591] at [.1658]**).

Confidential Restriction on Publication Claimed**[Confidential to Tabcorp]****Figure 42: Tabcorp's wagering turnover for racing and sports in FY15 and FY16**

- 274 There is now considerable diversity in the wagering products and services available to customers. Wagering products and services available to customers now include totalisator (pari-mutuel), tote derivative and fixed odds products, provided online, by phone, through retail locations or on-course. Customers in each state and territory have a wide range of options when placing bets, and are not restricted to a licensed operator in their home jurisdiction. In each state and territory, customers have the option of placing fixed odds or tote derivative bets online through corporate bookmakers licensed in the Northern Territory. They can also place online totalisator bets in states or territories outside their home state or territory.
- 275 In Australia, the ease with which approval for new wagering products can be obtained varies across jurisdictions. In the Northern Territory, approval of wagering products can take as little as three days, compared to several months in other states and territories. As a result, wagering operators licensed in the Northern Territory can offer a broader range and number of products than wagering operators licensed in other jurisdictions. This puts state-licensed operators such as Tabcorp at a significant disadvantage compared to corporate bookmakers.

H. IMPACT OF CORPORATE BOOKMAKERS

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276 The advent of electronic wagering has seen the growth of large corporate bookmakers, the majority of which are licensed in the Northern Territory.

277 In FY06, corporate bookmaker turnover was \$2.6 billion. By FY15, this increased to \$12.3 billion. Corporate bookmakers and Betfair have doubled their turnover over the past 5 years and now command more than \$12 billion in national turnover, representing approximately 40% of the wagering market. **Figure 43** below contains an overview of the turnover of corporate bookmakers from the period FY01 to FY15 which has been extracted from Tabcorp's September 2016 Board Paper is at **Tab 1 of DF-3 [TBP.003.001.0725]** at **[.0755]** and **[.0756]**.

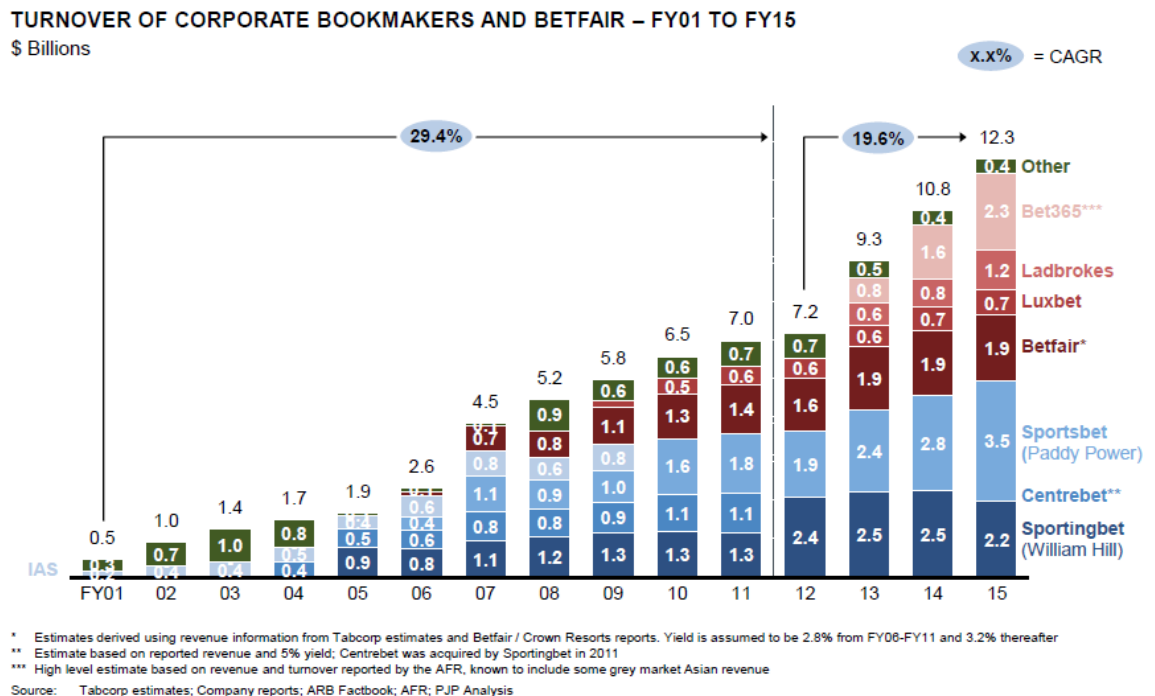


Figure 43: Turnover of corporate bookmakers and Betfair (FY01 to FY15)

278 At **Tab 14 of DF-2 [TBP.001.018.5686]** is a spreadsheet recording wagering turnover and revenue for Tabcorp for FY06 to FY16, and Tabcorp's estimates of wagering turnover for other wagering operators for the same period:

- (a) The Australian Capital Territory wagering turnover and revenue recorded in the spreadsheet is ACTTAB turnover and revenue up until the time when Tabcorp acquired ACTTAB in 2014 (that is, all amounts in FY06 to FY14 for the Australian Capital Territory should be deducted from the Tabcorp totals to arrive at Tabcorp's total turnover and revenue figures for those years. In FY15, approximately **[Confidential to Tabcorp]** in turnover and

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[Confidential to Tabcorp] ██████████ in revenue relates to ACTTAB before Tabcorp acquired the business.

- (b) The Luxbet turnover and revenue figures in the spreadsheet includes adjustments for free bets (i.e. where Luxbet funds the bet) and the “less Eliminations” row deducts turnover where Luxbet accepts a bet and lays off the liability into a Tabcorp pari-mutuel pool.
- (c) The PGI turnover and revenue in the spreadsheet relates to bets placed into Tabcorp pari-mutuel pools through PGI, Tabcorp’s Isle of Man joint venture with Phumelela Gold International. That is, these amounts should be deducted from the Tabcorp totals to arrive at Tabcorp’s total Australian turnover and revenue figures.
- (d) The figures in the row below the Tabcorp total revenue row record Tabcorp’s Australian revenue (that is, the total revenue less PGI and Luxbet revenue and pre-acquisition ACTTAB revenue).

279 Together with the growth of corporate bookmakers over the last decade, Tabcorp has also observed significant growth of the Australian wagering turnover and revenue of Australia wagering operators more generally. The approximate wagering revenues by operator for each year during FY06 – FY15 is listed below in **Figure 44**.

[Confidential to Tabcorp and Tatts]

Operator	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
TAB	████	████	████	████	████	████	████	████	████	████
Luxbet	█	█	█	█	█	█	█	█	█	█
Tatts	████	████	████	████	████	████	████	████	████	████
RWWA	228	254	262	276	278	294	293	316	339	336
ToteTAS	53	65	83	121	127	161	147	0	0	0
ACTTAB (pre-acquisition)	30	28	29	31	30	29	29	27	27	8
Corporate Bookmakers	108	154	207	244	284	299	409	592	720	971
Other Bookmakers	106	98	89	92	70	68	62	55	34	37
Betfair	14	18	22	28	33	36	38	45	45	45

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Total	████	████	████	████	████	████	████	████	████	████
Note: The figures for Tatts in FY06-FY11 are based on internal Tabcorp estimates. The figures for RWWA, ToteTAS, ACTTAB, corporate bookmakers and other bookmakers are based on internal Tabcorp estimates.										

Figure 44: Australian wagering revenues by operator FY06 – FY15 (in \$millions)

- 280 While corporate bookmakers have continued to expand as a percentage of total wagering, there has been consolidation in global expertise in the sector over the last five years. This has included a number of independent Australian corporate bookmakers (such as Sportsbet, Centrebet, Tom Waterhouse, Sportingbet and Betstar) being acquired by large, well-capitalised and well-established international wagering companies, several of whom have significant retail operations overseas (such as Paddy Power, William Hill and Ladbrokes). These international wagering companies are foreign owned and are aggressively targeting the Australian market through substantial advertising across a range of media and use of in-app promotions. Despite consolidation of many existing corporate bookmakers, several new corporate bookmakers are commencing operations such as Bluebet which was launched in October 2015.
- 281 Corporate bookmakers enjoy higher margins than Tabcorp. **Figure 45** below estimates the proportion of revenue retained by the three largest corporate bookmakers, Sportsbet, William Hill and Ladbrokes, (based on their reported financial figures for FY15) and Tabcorp (based on internal profit and loss accounts for FY16). It shows that Tabcorp retained a gross margin of **[Confidential to Tabcorp]** █████ of its revenue compared to the estimated gross margin retained by Sportsbet, William Hill and Ladbrokes which averages 49.2%.

[Confidential to Tabcorp]

	Sportsbet	William Hill	Ladbrokes	Sub-Total	NSW/Vic/ACT TAB's
Turnover	4,189.8	2,045.9	1,512.2	7,747.9	████
Yield	11.7%	11.0%	9.8%	11.2%	████
Gross Revenue	491.9	225.0	148.6	865.6	████
Free Bets	18.4	26.6	30.2	75.3	████
Net Revenue	473.5	198.4	118.4	790.2	████
Marketing Costs	104.1	51.9	38.7	194.7	████
Other Costs	245.3	119.9	74.6	439.8	████
Operating Profit	124.1	26.6	5.0	155.7	████
Profit ex Marketing	246.6	105.1	74.0	425.7	████
Gross Margin (% of TO)	5.9%	5.1%	4.9%	5.5%	████

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Gross Margin (% of Rev)	50.1%	46.7%	49.8%	49.2%	██████████
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Corporate bookmakers' data is based on results announcements for the 12 months ended 31 December 2015 and TAB data is based on internal P&L accounts for the 12 months ended 30 June 2016 (excluding Luxbet and Media).
 "Profit ex marketing" = Operating Profit less Free Bets and Marketing Costs.
 Sportsbet free bets data is based on the reported ratio of free bets to net revenue disclosed in the 2014 results announcement. This breakdown was not included in the 2015 results announcement.

Figure 45: Revenue retained by corporate bookmakers and NSW, Victorian and ACT Tabs.

282 **Figure 46** below shows the theoretical flow-throughs of a hypothetical incremental \$100 of revenue (or a hypothetical \$100 losing bet) with Tabcorp in New South Wales (NSW TAB), Victoria (VicTAB), the Australian Capital Territory (ACT TAB) and corporate bookmakers. Table [Y] shows that for an incremental hypothetical \$100 of revenue (or a hypothetical \$100 losing bet) with those State TABs, the average amount that flows through to the racing industry is approximately **[Confidential to Tabcorp]** ██████████ ██████████ ██████████. Contrastingly, an incremental hypothetical \$100 of revenue (or a hypothetical \$100 losing bet) with a corporate bookmaker would result in approximately \$14.30 of that bet flowing back to the racing industry (based on the average race field fees paid by corporate bookmakers). **Figure 46** also shows that based on an incremental hypothetical \$100 of revenue (or a hypothetical \$100 losing bet), the estimated earnings before interest, tax, depreciation and amortization (**EBITDA**) of corporate bookmakers is \$75.56 compared to **[Confidential to Tabcorp]** ██████████ retained by NSW TAB and **[Confidential to Tabcorp]** ██████████ retained by VicTAB.

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	██████████	██████████	██████████	██████████	Corporates
Revenue	██████████	██████████	██████████	██████████	100.00
GST	██████████	██████████	██████████	██████████	9.09
State Taxes	██████████	██████████	██████████	██████████	0.00
Product fees	██████████	██████████	██████████	██████████	0.00
Program Fee Indexation	██████████	██████████	██████████	██████████	0.00
Agency Commissions	██████████	██████████	██████████	██████████	0.00
Race Fields Fees	██████████	██████████	██████████	██████████	14.30
Sporting Body Fees	██████████	██████████	██████████	██████████	1.05
Profit Share	██████████	██████████	██████████	██████████	0.00
EBITDA	██████████	██████████	██████████	██████████	75.56

Note that this incremental revenue model assumes there is no impact on fixed costs, all rates are shown on a blended basis across racing, sports and virtual across retail and accounts for TABs, and that the ██████████
 ██████████
 'State Taxes' have been based on an incremental revenue model and assumes the application of relevant caps on wagering tax.

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'Product Fees' have been based on a blend of various contributions payable under the relevant wagering licences in New South Wales and Victoria.
 'Profit Share' amounts have been based on profit share arrangements between Tabcorp and state-based wagering industries such as the *Racing Distribution Agreement* in NSW and the *Joint Venture Agreement* in Victoria.

Figure 46: Theoretical incremental revenue flow-through model on hypothetical \$100 revenue

283 Since 2006, the growth of corporate bookmakers has been largely facilitated by:

- (a) Regulatory advantages, including:
 - i lower wagering taxes: as I noted above, excluding licence fees, the Northern Territory has capped the total wagering tax that it charges corporate bookmakers at \$575,000 in FY16;
 - ii limited payments to the racing industry, primarily in the form of race field fees;
 - iii the ability to offer tote derivative products without being subject to any regulatory requirements regarding the creation and operation of a totalisator pool. Corporate bookmakers are able to offer tote derivative products by relying on the State TABs to produce totalisator dividends and without bearing the costs associated with operating a totalisator pool;
 - iv wider range of betting events: corporate bookmakers licensed in the Northern Territory are permitted to take bets on a wider range of betting events compared to Tabcorp. At **Tab 10 of DF-1 [TBP.014.001.5970]** is a copy of the declared sporting events and other declared betting events that corporate bookmakers are authorised to take bets on in the Northern Territory. At **Tab 11 of DF-1 [TBP.014.001.1057]** is a copy of the events that Tabcorp's Victorian and New South Wales businesses are authorised to take bets on in Victoria and New South Wales respectively;
 - v favourable regulatory conditions in the Northern Territory whereby changes and developments are often approved more quickly and cheaply than regulators in other states and territories;
 - vi credit betting: corporate bookmakers are currently permitted to offer credit accounts to customers, whereas Tabcorp's TAB businesses are prohibited from doing so. Credit betting refers to the practice of allowing

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customers to place wagers on credit (that is, without the use of cash or credit cards) and settle the account at a later date; and

vii relatively low barriers to entry: As I set out above in C.5.134 above, the regulatory requirements for a corporate bookmaker to obtain a Northern Territory sports bookmakers' licence in the Northern Territory are relatively low.

- (b) Technological advantages such as faster internet connections, advent of smart phones (the first generation of smartphone was introduced in 2007), tablets and apps and an associated increased use of online payments; and
- (c) The relaxation of advertising laws following the *Betfair* decision (or the way in which they have been administered) which has allowed online corporate bookmakers to advertise nationwide, resulting in a substantial increase in corporate bookmakers' advertising activities.

284 Corporate bookmakers have significant competitive advantages over State TABs:

- (a) Although they have the same reliance on the racing industry as State TABs, corporate bookmakers are not subject to the same level of regulation. Most corporate bookmakers are licensed in the Northern Territory to take advantage of minimal regulation and taxation, but offer wagering on racing and other events conducted throughout Australia (via the internet and telephone) to residents in all states and territories. For example, Northern Territory-licensed bookmakers can offer betting on e-sports which are not available in other jurisdictions;
- (b) Despite the introduction of race fields legislation requiring payment to be made by wagering operators (including corporate bookmakers) for use of race field information, corporate bookmakers' financial contribution to the racing industry remains minimal compared to the contribution made by State TABs. Further, under various race field schemes, hybrid turnover/revenue charging models exist. These can result in State TABs paying significantly more for the same information. This is because the State TABs operate at higher yields than corporate bookmakers as a result of industry funding commitments, so will invariably pay race fields on the basis of their revenue. Corporate bookmakers can leverage their lower funding commitments to operate at much lower yields, which means they will pay less race fields than State TABs in respect of the same volume of wagering activity;

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- (c) Corporate bookmakers do not contribute to the same extent as the State TABs to the provision of racing information services to the public (which are largely funded by the State TABs). In FY16, Tabcorp contributed in excess of **[Confidential to Tabcorp]** [REDACTED] million to racing information services, including radio stations, the newspaper form guides, Sky Racing and Trackside vision in TAB agencies and on home pay TV channels. Tabcorp is not aware of the equivalent amounts paid by corporate bookmakers for similar services.
- (d) Bookmakers also enjoy lower overhead costs because they do not have to maintain the same retail distribution infrastructure as State TABs. Through operating retail venues, State TABs incur property expenses and are required to pay for retail operational expenses (such as the printing of betting tickets). Further, State TABs only provide a single bet type (as fixed odds and tote derivative products both operate under the same system whereas State TABs require a separate system to operate pari-mutuel products) and have significant tax advantages (as I have described above). Some operators, such as Ladbrokes, offer 'cash out' services via a Ladbrokes Visa Card and also 'cash in' facilities through newsagencies. These arrangements extend the Ladbrokes offering to the retail environment without the overhead of State TAB retail networks.
- (e) Although some corporate bookmakers choose to operate on-course wagering facilities, they are not required to do so and may therefore elect to operate on-course at only selected race clubs that are more likely to be profitable. In contrast, Tabcorp is **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. I set out at **Tab 15 of DF-2 [TBP.001.018.6780]** a presentation titled 'The Future of On Course Wagering' prepared by Growth Solutions Group in February 2015 for Tabcorp, which records that **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]. I set out at **Tab 46 of DF-3 [TBP.001.018.6779]** the profit and loss statement taken from Tabcorp's general ledger for FY16 which shows that **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED].

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285 In this context, corporate bookmaker products are often offered at better odds whilst still retaining higher margins compared to State TABs.

286 Tabcorp has considered responding to competition from corporate bookmakers by reducing its take-out rates. As noted above, the maximum take-out rate for all State TABs is regulated by legislation in each state and territory. In Tabcorp's experience, reducing take-out rates results in minimal increases in turnover while Tabcorp still faces significant costs in supplying the services (including racing industry financial contributions and venue commissions) and is not profitable.

287 I believe that a number of factors may explain why reducing take-out rates is generally not profitable. The most obvious reason is that the availability of tote derivative products (such as 'tote plus 5%' or 'best of the totes') would immediately neutralise any reduction in take-out rates, giving tote derivative customers no reason to switch. By their nature, tote derivative products automatically track the total final dividends of pari-mutuel products. Further:

- (a) while both take-out rates and projected dividends are available to customers, the projected dividends are shown together with the race information which customers are likely to review ahead of placing their bets; and
- (b) many customers (including the fixed odds customers whom Tabcorp would be seeking to win) would not appreciate the extent to which any reduction in take-out rates would flow through to projected dividends. This is at least in part because other factors such as pool size and betting decisions of other customers are also relevant.

288 **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
[REDACTED].

289 **[Confidential to Tabcorp]** [REDACTED]
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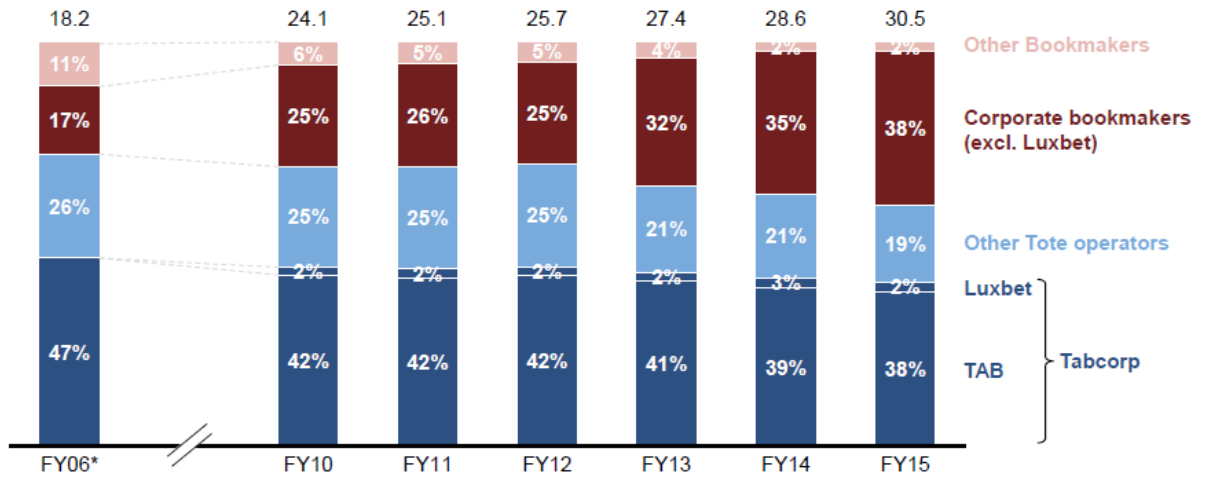
[REDACTED]

290 **[Confidential to Tabcorp]** [REDACTED]

H.1. Impact of corporate bookmakers on State TABs

290A State TABs have traditionally enjoyed a significant share of the Australian wagering market. However, their market share has been decreasing steadily. I set out in **Figure 47** below the wagering industry turnover from FY10 to FY15 which shows an increase in corporate bookmakers' market share of turnover and a decrease in State TABs' market share of turnover (**Tab 1 of DF-3 [TBP.003.001.0725]** at [.0832]).

WAGERING TURNOVER MARKET SHARE
Percent; \$ Billions turnover



* 2006 based on March 2012 strategy workshop
Source: Tabcorp estimates; Australian Gambling Statistics 31st Ed.; ARB fact book

Figure 47: Wagering turnover by wagering operator

291 During this period, the rate of growth of corporate bookmakers has been significantly higher than that of the State TABs. This increase is due to the increasing popularity of

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online betting accounts, the offering by corporate bookmakers of tote derivative or 'tote odds' products (as I describe above in section G.2) and extensive marketing and promotional activity following the *Betfair* decision.

- 292 An example of a recently proposed wholesale totalisator product by a corporate bookmaker is "The Global Tote". Global Tote Limited (**GTL**), a subsidiary of TopBetta Holdings Limited (**TopBetta**), an ASX listed corporate bookmaker licensed in the Northern Territory, is proposing to introduce the Global Tote in Australia. At **Tab 67** of **DF-1 [TBP.015.001.5150]** is a copy of a print-out from the website of TopBetta, which refers to TopBetta being granted a sports bookmaker's licence by the Northern Territory Racing Commission in August 2016 and notes that it has built proprietary technology platforms that combine an online racing and sports wagering offering with a fantasy wagering platform that enables sports fans to compete against each other via online tournaments.
- 293 A copy of GTL's authorisation application lodged with the ACCC in mid-December 2016 is at **Tab 68** of **DF-1 [TBP.015.001.5125]**. The application describes GTL's product as a wholesale business-to-business totalisator product which will provide Australian and international bookmakers with the opportunity to participate in GTL's global pool in relation to Australian and overseas racing and sporting events. At **Tab 69** of **DF-1 [TBP.015.001.5148]** is an announcement by TopBetta stating that GTL had signed on corporate bookmaker Ladbrokes.com.au, the Australian subsidiary for the UK parent and international wagering conglomerate Ladbrokes Coral Group plc., as the first wagering operator to commit to using the Global Tote. Tabcorp considers that the arrangements proposed by GTL are likely to contravene provisions under the *Racing and Betting Act (NT)* and other similar legislation in other states and territories that govern the conduct of wagering as the arrangements may result in the operation of a totalisator without the appropriate licence.
- 294 Tabcorp's estimates of turnover and market share in the Australian wagering market between FY10 and FY15 are set out in **Tab 44** of **DF-3 [TBP.003.001.0941]** at **[.0950]** and excerpted at **Figure 48** below. This figure illustrates the increasing turnover and market share of bookmakers, particularly those licensed in the Northern Territory, as compared to the generally decreasing market share of Tabcorp's TAB businesses.

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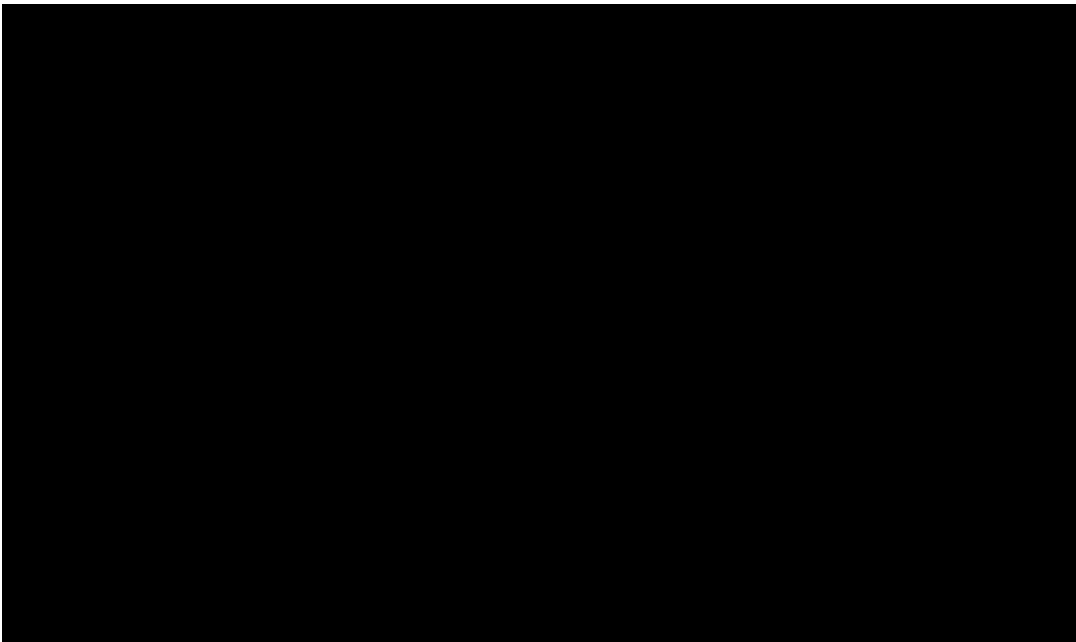
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Figure 48: Estimate of wagering turnover of TAB in the wagering market

- 295 In circumstances where corporate bookmakers are able to, and do, offer more favourable odds or greater returns on their products, particularly in the context of 'tote price plus five' offerings, the key incentives for a customer to wager through a State TAB are:
- (a) the ability to use cash to place bets, which corporate bookmakers are precluded from doing under their licensing regimes. Some customers find cash more convenient. Others prefer cash as it allows them to easily monitor and limit their wagering spends;
 - (b) the ability to wager in retail locations (although customers are able to, and do, place online bets with corporate bookmakers while in those locations). Some customers find it more convenient to bet in retail environments. Others value the social and entertainment features of the retail environment;
 - (c) brand loyalty and participation in loyalty programs (such as Tab Rewards);
 - (d) to support the racing industry, knowing that a significantly higher proportion of the profit generated by the State TAB will be returned to the racing industry compared to the corporate bookmakers' profit; and
 - (e) reticence amongst State TAB customers to change wagering habits, generated by customer comfort and familiarity in using the State TABs.

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- 296 Given corporate bookmakers' significant competitive advantages over State TABs I regard them as Tabcorp's strongest competitors in wagering, with Tatts being a weak competitor. Not only does Tatts suffer from similar costs disadvantages as Tabcorp but:
- (a) it has a weaker brand;
 - (b) its brand is particularly weak in states outside those where it holds the totalisator licences, including the two largest racing states in Victoria and New South Wales;
 - (c) its online presence is inferior to its competitors;
 - (d) Tabcorp and Tatts do not compete in the retail market;
 - (e) it has a lower marketing and sponsorship presence;
 - (f) it does not offer all bet types on all race meetings;
 - (g) its product range and bet type range are not as good as Tabcorp's; and
 - (h) Tatts historically has underperformed the wagering market from a revenue and turnover perspective.
- 297 In fixed odds racing and sports wagering particularly, Tabcorp does not consider Tatts/UBET to be a particularly vigorous and effective competitor compared to corporate bookmakers. This is due to the following reasons:
- (a) Tatts/UBET is not known for offering better market percentages for thoroughbred racing compared to other wagering operators in the market generally. Although Tatts/UBET provide competitive market percentages for greyhounds and harness racing, those two codes of racing accounts for significantly less wagering turnover than thoroughbred racing. For example in the period 1 August 2015 to 31 July 2016, the total turnover of thoroughbred, greyhound and harness racing was \$15,718.33 million, \$3,162.14 million and \$1,760.51 million respectively.
 - (b) Tatts/UBET's live sports betting experience is not as attractive as it relies on an 'auto-trader' which tends to suspend betting from time to time throughout matches and does not make available NBA or National Basketball League (**NBL**) scores, vision or visualisation (i.e. a visual of where the players are on the court when vision is not available).
 - (c) Tatts/UBET is less active in offering bonus bets and other promotions to customers than Tabcorp and the corporate bookmakers.
 - (d) Tatts/UBET offers fewer products compared to Tabcorp. For fixed odds products on international races that are broadcast by Sky Racing, Tatts/UBET only offers

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products on approximately 30% of those races, while Tabcorp offers products on 100% of those races.

- (e) Tatts/UBET invests less in marketing than Tabcorp and corporate bookmakers. Tabcorp's estimate of UBET's marketing spend for FY15 was \$40 million (**Tab 44 of DF-3 [TBP.003.001.0941]**). In comparison, the marketing spend of Tabcorp for FY15 was **[Confidential to Tabcorp]**. Tabcorp estimates the marketing spend of Sportsbet, Ladbrokes and William Hill for FY15 was \$92 million, \$65 million and \$77 million respectively. Tabcorp understands that UBET's advertising is largely targeted to the states in which it holds a state-based retail wagering licence.
- (f) Tatts/UBET does not appear to have a reputation for providing customers with value through better odds. In a recent survey undertaken for Tabcorp in December 2016 (at **Tab 16 of DF-2 [TBP.014.001.2392]** at **[.2463]**):
- i Sportsbet and Tabcorp were identified by **[Confidential to Tabcorp]** of respondents respectively as representing 'best value for money.' **[Confidential to Tabcorp]** of respondents identified UBET as representing 'best value for money.'
 - ii Sportsbet and Tabcorp were identified by **[Confidential to Tabcorp]** of respondents respectively as offering 'great odds.' **[Confidential to Tabcorp]** identified UBET as offering 'great odds.'
- (g) Tatts/UBET appears to have relatively few digital customers in jurisdictions where it does not hold the state-based wagering licence. Recent Tabcorp data from October 2016 reports that **[Confidential to Tabcorp]**
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. A copy of Tabcorp's Wagering KPIs Dashboard reflecting these figures is at **Tab 17 of DF-2 [TBP.001.027.6618]**.
- (h) Tatts/UBET's websites and apps are less convenient and accessible for customers. In a recent survey undertaken by Tabcorp, respondents rated Tatts/UBET's website and apps as **[Confidential to Tabcorp]**
[REDACTED] (**Tab 16 of DF-2 [TBP.014.001.2392]** at **[.2463]**). Tatts/UBET also provides fewer options for

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customers to claim their winnings and make deposits and does not offer online customer assistance (which is commonly provided by other wagering operators). Tatts/UBET customers are limited to obtaining customer assistance by telephone or email only.

298 Rather than Tatts/UBET, Tabcorp considers that corporate bookmakers are its more vigorous and effective competitors. Tabcorp's marketing strategy reflects Tabcorp's focus on corporate bookmakers as its major competitors, rather than Tatts/UBET.

Tabcorp understands that:

- (a) For fixed odds racing wagering, Bet365 Plus is generally the most aggressive supplier of fixed odds wagering products as they usually adopt market percentages that are 2-3% lower than other wagering operators. When tote derivative products are taken into account, Tatts/UBET's average closing market percentage is higher than that of corporate bookmakers (including Luxbet); and
- (b) For fixed odds sports wagering, the market percentages of corporate bookmakers tend to be similar to Tabcorp. However, Tatts/UBET is not the market leader, while Sportsbet offers the benchmark in terms of product range and promotion.

299 Tabcorp has analysed closing market percentages for fixed odds win bets across all three racing codes (thoroughbred, harness and greyhound) for the period October 2016 to end of January 2017. A table setting out market percentages for Tabcorp, Tatts and corporate bookmakers is below at **Figure 49**. This table has been compiled through an analysis of the publicly available closing fixed price percentages (or margins) of each wagering operator as published online at wagering resource / comparison websites. The column labelled 'Best of bookies' is based on the highest fixed odds on offer per runner selection, in respect of the races analysed. By comparing that column to those for individual wagering operators, it is apparent that no single wagering operator consistently offered the highest fixed odds all of the time.

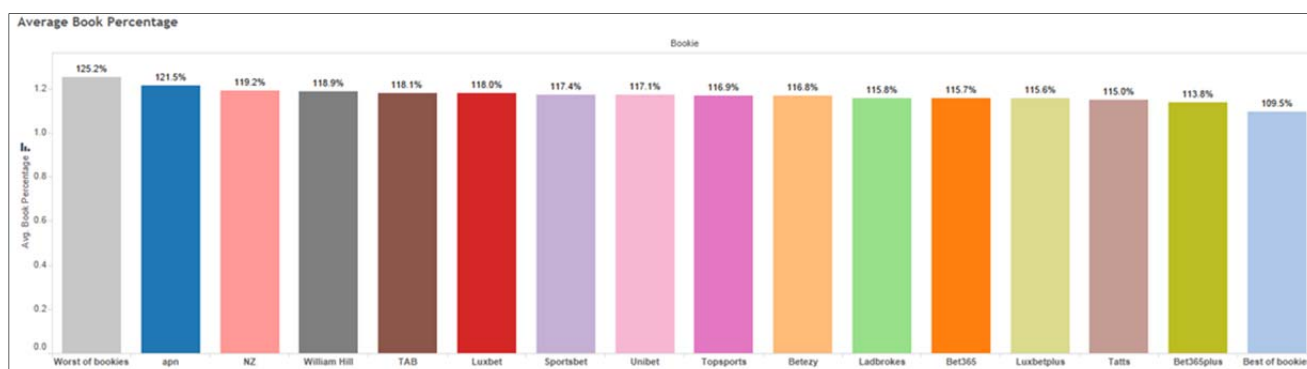


Figure 49: Average closing fixed odds book percentage for racing

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300 When tote derivative products are taken into account, Tatts / UBET's average closing market percentage is higher than that of corporate bookmakers (including Luxbet). Tatts / UBET does not offer tote derivative products. For example, **Figure 50** below compares, for thoroughbred racing for the period 29 January to 8 February 2017, average closing market percentages for:

- (a) Tatts / UBET's fixed odds products;
- (b) Bet365's fixed odds products; and
- (c) Bet365's tote derivative product called '365 Best', which is the best of the three totes and the Victorian Official Price/Australian Prices Network Starting Price.

Figure 50 shows that Bet365's tote derivative product has a lower market percentage than the fixed odds products which Tatts/UBET can offer.

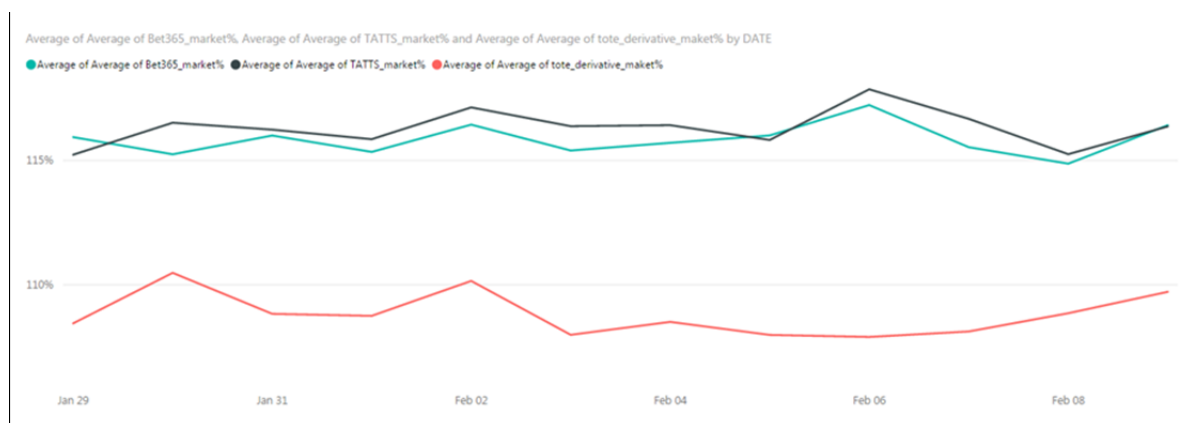


Figure 50: Average market percentages for racing by date for Tatts/UBET fixed odds, Bet365 fixed odds, and Bet365 tote derivative

301 Similarly in relation to fixed odds wagering on sports, Tabcorp has analysed closing market percentages for pre-match betting across four key sports, namely NBA, National Football League, NRL and AFL. That analysis is summarised in **Figure 51** below.

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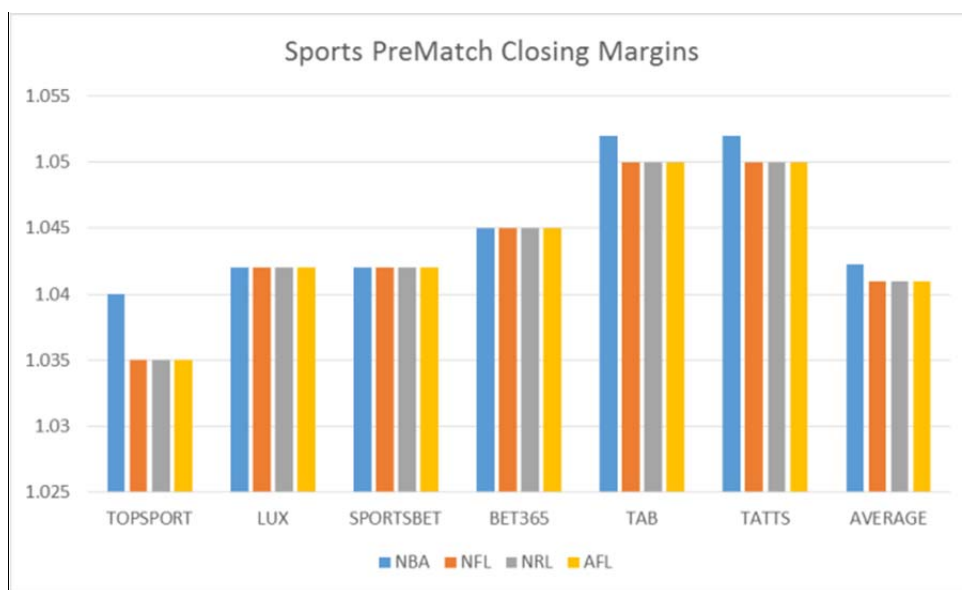


Figure 51: Average closing fixed odds book percentage for sports

H.2. Impact of corporate bookmakers on racing industry and State governments

- 302 In FY15, Northern Territory licensed corporate bookmakers paid almost \$5 million in wagering tax on \$9.6 billion in turnover. On the same turnover, Tabcorp estimates that it would have paid \$190 million back to the government. A copy of the 2016 Tabcorp Annual Report recording this estimate is at **Tab 21** of **DF-1 [TBP.011.001.0117]**.
- 303 In FY14, Northern Territory licensed corporate bookmakers paid approximately \$6 million in wagering tax on \$8.5 billion in turnover. On the same turnover, Tabcorp estimates that it would have paid \$170 million back to the government. A copy of the 2015 Tabcorp Chairman's Annual General Meeting address referring to this estimate is at **Tab 70** of **DF-1 [TBP.011.001.2585]**.
- 304 Excluding licence fees, the Northern Territory has capped the total wagering tax that corporate bookmakers are liable to pay at \$575,000 for each operator in FY16. The amount paid under the capped wagering tax is a significantly small proportion of the total profit earned by corporate bookmakers. The tax incentives offered by the Northern Territory Government and the avoidance of industry product fees have created a significant cost disparity between corporate bookmakers and State TABs. I set out below **Figure 52** that shows the operation of the Northern Territory tax provisions, as applicable to William Hill and Ladbrokes. It shows that based on the reported annual revenue of these corporate bookmakers in FY15 and excluding any consideration of applicable federal taxes paid for goods and services tax, the proportion of their profits that were not taxed under the Northern Territory wagering tax was 97.1% and 94.7% respectively.

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	William Hill	Ladbrokes*
Reported Annual Revenue FY2015 (\$AUD)	198,400,000	108,000,000
10% of Gross Profits (uncapped)	19,840,000	10,800,000
Capped Tax Payment	575,000	575,000
Proportion of Profits not taxed	97.1%	94.7%
*Ladbrokes Australia were licensed in Norfolk Island during the above period but have since changed to a Northern Territory licence		

Figure 52: Tax payments made by Northern Territory licensed corporate bookmakers (FY15)

305 Tabcorp and other State TABs pay a higher proportion of their wagering turnover to the racing industry. Based on Tabcorp's estimates, Tabcorp contributed **[Confidential to Tabcorp]** of total racing industry funding contribution in FY16 and State TABs together contributed approximately **[Confidential to Tabcorp]** of total racing industry funding contribution in the same period. In FY16, Tabcorp contributed approximately **[Confidential to Tabcorp]** of its total wagering turnover to the racing industry, whereas corporate bookmakers are estimated to have contributed only **[Confidential to Tabcorp]** of their total wagering turnover. I set out below **Figure 53** which compares the racing industry contributions made by each State TAB and corporate bookmakers in FY16. **Figure 53** has been prepared by Tabcorp based on:

- (a) Tabcorp's publicly announced accounts for FY16, excluding any PGI profit sharing arrangement, media payments and product fees paid to overseas racing industry bodies;
- (b) Tatts' accounts as provided to Tabcorp as part of the merger due diligence process;
- (c) RWWA's Annual Report for 2015 – 2016 (**Tab 71 of DF-1 [TBP.011.001.2143]**);
- (d) The Racing Fact Book for the period 2015 – 2016 (**Tab 8 of DF-1 [TBP.015.001.1591]**) and where unavailable for that period, additional data from the Racing Fact Book for the period 2014 – 2015 (**Tab 1 of DF-1 [TBP.011.001.3106]**);
- (e) For corporate bookmakers' turnover calculation, funding has been assumed to be 2% of the racing portion of sales.

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	Payments to racing industry	Proportionate contribution to total racing industry funding	Proportion of turnover paid to racing industry
Totalisators total	██████████	██████	████
<i>Broken down as between:</i>			
Tabcorp	██████████	██████	████
Tatts	██████████	████	████
RWVA	██████████	██████	████
Corporate bookmakers total	\$196.7 million	██████	████

Figure 53: Proportion of racing industry payments made by wagering operators by turnover (FY16)

306 Racing Queensland, the state-based racing industry body in Queensland, has recently reported on the decline of its financial position. On 1 October 2016, Racing Queensland announced that it had recorded a loss of \$21.8 million (\$12.7 million in 2014/2015) against a budgeted loss of \$28 million. A copy of that media announcement and Racing Queensland's 2015/2016 Annual Report recording those figures is at **Tabs 72 and 73 of DF-1 [TBP.001.027.1727]** and **[TBP.001.027.1747]**. On 11 March 2016, Racing Queensland announced that it was revisiting its prize money structure for Metropolitan racing in Queensland, resulting in the reduction of prize money for Saturday Metropolitan meetings. A copy of that media announcement is at **Tab 74 of DF-1 [TBP.001.027.1725]**.

H.3. Profiles of corporate bookmakers

307 Entrants to the Australian wagering market have generally been foreign-owned corporate bookmakers, which have achieved entry either organically or by acquiring smaller or independent Australian wagering operators. Recently, there has been a consolidation of corporate bookmakers in Australia with a number of independent Australian corporate bookmakers being acquired by international wagering companies (Sportsbet by Paddy Power; Sportingbet, Centrebet and tomwaterhouse.com by William Hill and Betstar by Ladbrokes). These international wagering companies are large, well-capitalised and well-established and conduct substantial international operations overseas and have access to the information technology services that would be required to run a bookmaking business in Australia. Such substantial existing operations overseas reduce the scale of operation required to conduct a wagering business efficiently in Australia. I

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set out below **Figure 54** which summarises the entry and consolidation of corporate bookmakers in Australia since 2010. This consolidation, while reducing the total number of corporate bookmakers, has increased the strength of the sector as customers benefit from international know-how and larger balance sheets.

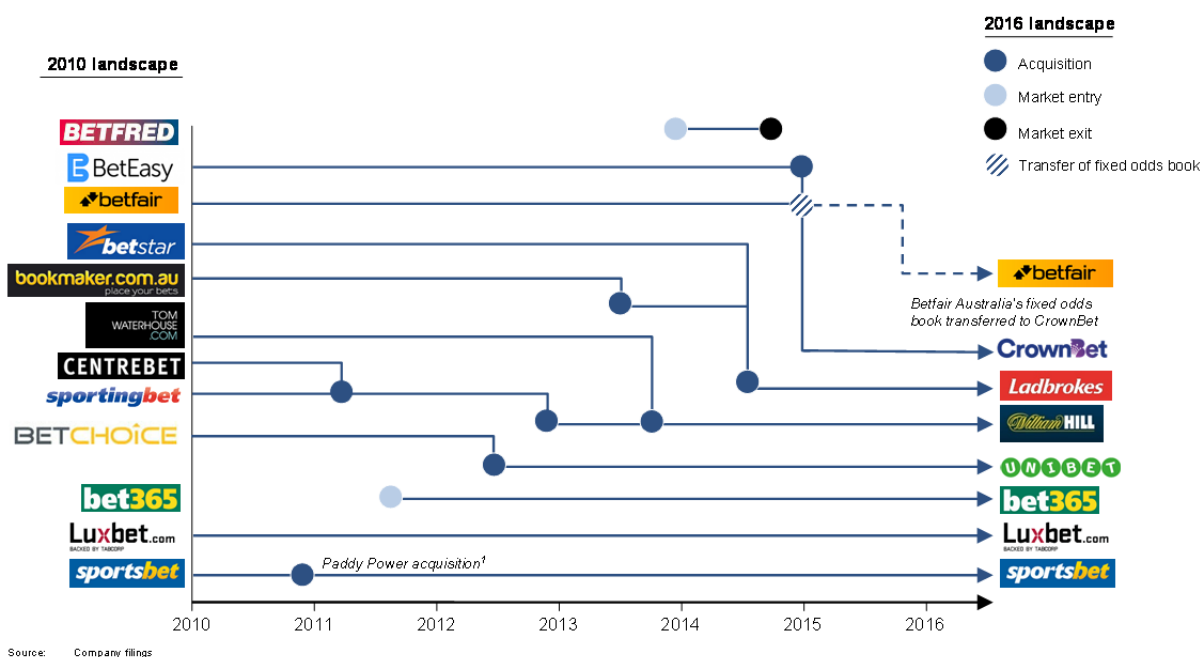


Figure 54: Entry and consolidation of corporate bookmakers in Australia, 2010-2016

308 As corporate bookmakers provide wagering products directly to customers predominantly online (and to a lesser extent, over the telephone), they require limited investment in physical facilities and distribution arrangements. This applies equally to foreign-owned corporate bookmakers that seek to enter the Australian wagering market. To offer wagering services in the Australian market, a corporate bookmaker will require:

- a telecommunications service to facilitate wagering online or by telephone;
- access to intellectual property by the payment of race fields information fees and similar fees to the racing and sporting codes upon which the bookmaker allows customers to place bets;
- substantial capital to invest in advertising or promotion in order to reach potential customers in the market;
- customer risk management systems; and
- general head office including information technology and payroll.

309 The example of Matthew Tripp, current CEO of CrownBet, shows the ease with which corporate bookmakers may enter and expand operations within the Australian wagering

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market. Mr Tripp bought the Darwin-based corporate bookmaker Sportsbet in 2005 for \$250,000, before selling the company to Irish bookmaker Paddy Power for \$338 million in 2011. In 2012, following the expiration of a one year non-compete period, which was a condition of Paddy Power's acquisition of Sportsbet, Mr Tripp and his family purchased BetEzy for less than \$10 million. In 2014, BetEzy entered into a joint venture with Crown Resorts to operate CrownBet. A copy of media reports on Mr Tripp's various wagering business activities is at **Tab 75 of DF-1 [TBP.001.027.5313]**.

- 310 I am aware of only two significant wagering operators that have discontinued their entry into the Australian wagering market in the past 5 years, being Betfred (in 2014) and Sports Alive (in 2011). Tabcorp understands that some of the factors that may have led to Betfred ceasing their operations in Australia include the impact of restrictions on online live betting and their limited offering, which focused on sports betting. Sports Alive ceased operations when it went into administration in 2011. At **Tab 76 of DF-1 [TBP.001.018.7439]** is a media article that reports on Sports Alive going into administration in August 2011 and notes that it has subsequently been the subject of fraud investigations.
- 311 The Australian wagering market has been and continues to be aggressively targeted by global companies. Other large international bookmakers could still enter the Australian wagering market quickly and effectively compete in it. Such bookmakers may include:
- (a) Betway, a large European corporate bookmaker based in Malta; and
 - (b) 888sport, a large European corporate bookmaker based in Gibraltar.
- 312 Tabcorp regularly monitors the activity of corporate bookmakers in Australia and overseas. Tabcorp monitors:
- (a) the advertising spend of competitors;
 - (b) the media and regions where competitor advertisements are placed;
 - (c) the types of promotions / offers in the market;
 - (d) recent activity (e.g. new sponsorships, products etc); and
 - (e) data analytics, for example the number of times a competitor's smart phone app has been downloaded.
- 313 The main corporate bookmakers operating in Australia are:
- (a) **Paddy Power/Sportsbet:** Sportsbet is a wholly owned subsidiary of Paddy Power, an Irish listed betting company. Paddy Power has an estimated enterprise

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value of A\$13.4 billion following its recent merger with Betfair. Paddy Power's global profit for the year ended 31 December 2015 was €152.8m (approximately A\$228m). The Australian market contributed approximately 44% of Paddy Power's operating profit for FY15. A copy of Paddy Power's 2015 Annual Report which reports on Paddy Power is at **Tab 46 of DF-1 [TBP.014.001.6089]**.

Paddy Power announced in its 2016 interim results that its revenue from Australia was up 17% to £129m. Sportsbet is the largest corporate bookmaker currently operating in Australia. Tabcorp estimates that it accounts for approximately 20% of online wagering.

Sportsbet has more than doubled its marketing spend from FY13 to FY15 with the highest share of above the line media spend and known sponsorship as recorded in **Tab 44 of DF-3 [TBP.003.001.0941]** at **[.0952]**. Sportsbet supplements its sponsorships by focusing the majority of above the line media spend on driving awareness through TV spend (approximately \$26.7m), radio (approximately \$3.7m) and print (approximately \$2.8m). Between June 2015 – June 2016, Tabcorp estimates that Sportsbet spent approximately \$41m on advertising (**Tab 1 of DF-2 [TBP.014.001.2018]** at **[.2033]**).

- (b) **Bet365:** Bet365 is a privately-held UK-based gambling company and is one of the world's biggest online gambling groups. Bet365's global profit for the year ended 27 March 2016 was approximately £448m (approx. A\$718m). Bet365 obtained its Australian bookmaking licence in February 2011 in the Northern Territory and began taking bets in 2012. Bet365 offers fixed odds betting on thoroughbred, harness and greyhound racing and sporting events. Bet365 offers live streaming of over 50,000 events to computers and mobile devices. Tabcorp estimates that it accounts for approximately 13% of online wagering. Between June 2015 – June 2016, Tabcorp estimates that Bet365 spent approximately \$2.2m on advertising (**Tab 1 of DF-2 [TBP.014.001.2018]** at **[.2043]**).
- (c) **William Hill:** William Hill has a global strategy that involves investing in regulated markets. William Hill entered the Australian market in 2013 when it acquired Sportingbet (which had acquired Centrebet two years prior) and Australian bookmaker tomwaterhouse.com. William Hill is the third largest betting operator in Australia by net revenue. William Hill's Australian operating profit for FY2015 was A\$26 million. A copy of William Hill's 2015 Annual Report is at **Tab 77 of DF-1 [TBP.014.001.7895]**.

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Based on William Hill's marketing activities, it appears that they are investing heavily to build their brand presence in Australia. Tabcorp estimates that William Hill accounts for approximately 12% of online wagering in Australia, with reported year on year digital turnover growth to March 2016 of 8%. Between June 2015 – June 2016, Tabcorp estimates that William Hill spent approximately \$14.7m on advertising (**Tab 1 of DF-2 [TBP.014.001.2018]** at **[.2037]**).

William Hill also operates WA TAB's fixed odds book under an agreement with RWWA.

- (d) **Crown (Crownbet):** CrownBet is an online wagering company, majority-owned by Australian publicly listed company Crown Resorts. Crown Resorts also has other Australian gambling interests, such as Crown Melbourne, Crown Perth and a proposed resort in Sydney's Barangaroo, which will have a restricted gaming licence. CrownBet is one of Australia's fastest growing bookmakers and is the exclusive wagering partner of the AFL for the next five years and premium wagering partner of Racing.com. Tabcorp estimates that CrownBet currently accounts for approximately 5% of online wagering in Australia. A copy of a report by UBS which records this estimate is at **Tab 78 of DF-1 [TBP.008.001.1118]**. Between June 2015 – June 2016, Tabcorp estimates that Crownbet spent approximately \$19.7m on advertising (**Tab 1 of DF-2 [TBP.014.001.2018]** at **[.2035]**).
- (e) **Unibet:** Unibet is a Swedish company currently operating online with around 14 million registered customers worldwide. Unibet has licences in France, Belgium, Denmark, Italy, Australia and the United Kingdom. Recently, Unibet has demonstrated its intention and ability to expand by acquiring online gambling businesses including Stan James Group for £19m in the United Kingdom, and the iGame Group for €59m, which is a specialist gambling operator and offers online casino, poker and sports betting. These acquisitions strengthen Unibet's position in the gambling market and its commitment to build a diverse and balanced portfolio of market opportunities in regulated markets. Unibet acquired Betchoice in 2012, one of the leading independent corporate bookmakers offering racing and sports betting products in Australia. Between June 2015 – June 2016, Tabcorp estimates that Unibet spent approximately \$1.8m on advertising (**Tab 1 of DF-2 [TBP.014.001.2018]** at **[.2045]**).
- (f) **Ladbrokes:** Ladbrokes is a British-based betting and gaming company. Ladbrokes has considerable retail experience and expertise, with 69.2% of its UK

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operation in retail. The Group has a presence in the UK, Ireland, Belgium, Spain as well as in Australia.

In 2013, Ladbrokes acquired Bookmaker Pty Ltd and in April 2014 it acquired Australian online bookmaking business Betstar.

Ladbrokes' strategy in Australia is to create a strong customer base, create new and innovative products and build upon an investment in brand awareness. Between June 2015 – June 2016, Tabcorp estimates that Ladbrokes spent approximately \$21.2m on advertising (**Tab 1 of DF-2 [TBP.014.001.2018] at [.2039]**). Ladbroke's net revenue in Australia in FY15 increased by 54% to £53.2m. Tabcorp estimates that Ladbrokes accounts for approximately 12% of online wagering in Australia, with reported year on year digital turnover growth to March 2016 of 52%.

- (g) **Betfair:** Betfair was founded in the United Kingdom as an online bookmaker in May 1999, and is the pioneer of the 'betting exchange' concept. Betfair Australia launched in Australia in 2005 through a joint venture between Betfair and Crown. CrownBet subsequently acquired the whole company in 2014 and absorbed Betfair's fixed odds book into CrownBet's operations. Betfair Australia continues to operate as a standalone pure play exchange, licensed in the Northern Territory. Although Betfair is currently much more popular in the United Kingdom than Australia, it has the potential to also become a significant competitive threat in the wagering market in Australia.

314 Several of the corporate bookmakers listed above have significant experience running retail operations in their local jurisdictions. The United Kingdom Government's Gambling Commission published a report titled "Industry statistics" on 24 November 2016 regarding gambling in the United Kingdom. The report noted (at page 21) that as at September 2016:

- (a) Ladbrokes and Gala Coral together operate over 4,100 betting shops; and
- (b) William Hill operate around 2,300 betting shops.

The report shows that together Ladbrokes / Gala Coral and William Hill operate 72% of all betting shops in Great Britain.

H.4. Corporate bookmakers' marketing activities

315 Following the relaxation of state and territory based prohibitions on gambling advertising after the High Court's decision in *Betfair*, there has been a substantial increase in

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corporate bookmakers' advertising presence in Australia. Brand recognition and establishing good will is important to attracting and maintaining wagering customers and increased competition and product innovation from corporate bookmakers have driven a sharp increase in the advertising spend of the wagering industry in general. However as noted above, customers commonly use the services of multiple wagering operators, even on the one digital device. Brand loyalty itself therefore does not pose a strong barrier to entry for potential new corporate bookmakers seeking to enter the Australian wagering market

- 316 On Tabcorp's estimates, total marketing spend in the wagering industry has increased almost three-fold from approximately \$119m in FY11 to approximately \$328 million in FY15 as set out in **Figure 55** below (which has been extracted from Tabcorp's September 2016 Board Paper (**Tab 1 of DF-3 [TBP.003.001.0725]** at **[.0758]**). Marketing spend may include fees arising from professional consulting and production services, promotions (including bonus bets), advertising costs and sponsorship fees.

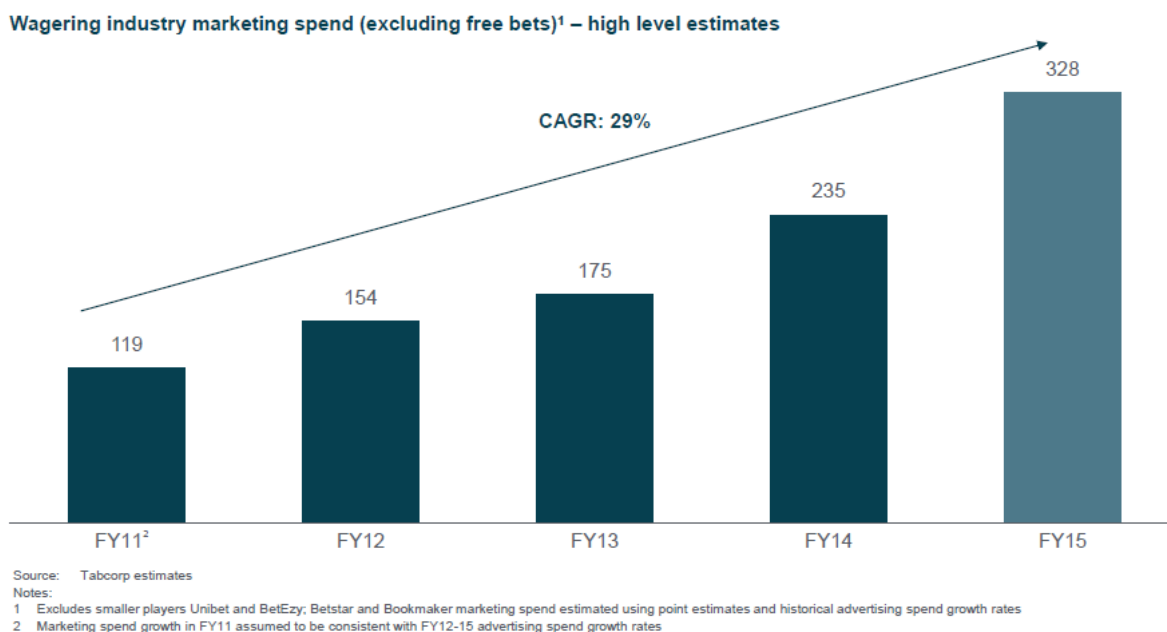


Figure 55: Wagering industry marketing spend (FY11 to FY15)

- 317 Tabcorp spends approximately **[Confidential to Tabcorp]** per annum on its national marketing spend (as recorded in Tabcorp's FY17 Business Plan (**Tab 47 of DF-3 [TBP.003.001.1096]** at **[.1114]**). This is **[Confidential to Tabcorp]** than that of Sportsbet (\$92 million) and also **[Confidential to Tabcorp]** than William Hill (\$77 million), with a significant proportion of Tabcorp's marketing spend allocated to racing sponsorship (approximately **[Confidential to Tabcorp]**).

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Tabcorp estimate that Sportsbet has more than doubled its marketing spend from FY13 to FY15. Sportsbet has the highest share of above the line media and known sponsorships, both which are designed to drive customer acquisition. I set out at **Figure 56** below Tabcorp's estimates on the total marketing spend of major corporate bookmaker competitors. I attach at **Tab 47** of **DF-3 [TBP.003.001.1096]** a confidential copy of Tabcorp's FY17 Business Plan which contains these figures.

[Confidential to Tabcorp]

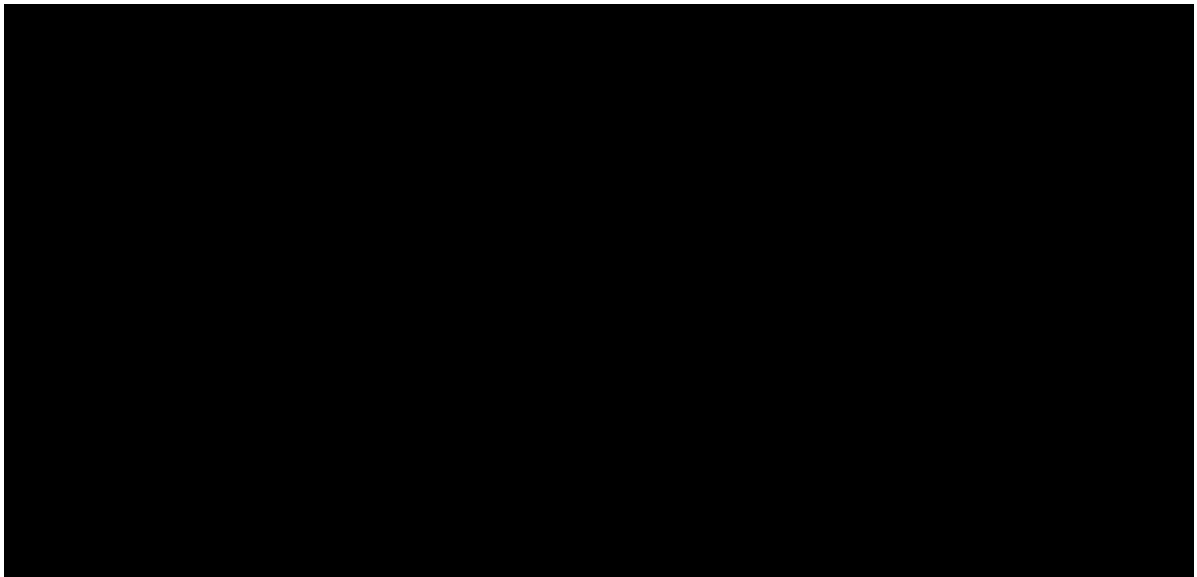


Figure 56: Estimated total marketing spend of major corporate bookmakers and Tabcorp

318 **[Confidential to Tabcorp]** Tabcorp's advertising spend is also [REDACTED] than that of the major corporate bookmakers. Tabcorp's June 2016 Competitive Report (**Tab 1** of **DF-2 [TBP.014.001.2018]**) records that from June 2015 – June 2016, Tabcorp and Luxbet spent **[Confidential to Tabcorp]** [REDACTED] on advertising respectively. In comparison, the June 2016 Competitive Report records the advertising spend during the same period was **[Confidential to Tabcorp]** [REDACTED] for Sportsbet (\$41 million), Crownbet (\$19.7 million), William Hill (\$14.7 million) and Ladbrokes (\$21.2 million). These advertising spend figures include the cost of advertising in press, magazines, radio, television, online banners, cinema, direct mail and billboards.

I. TABCORP'S COMPETITIVE RESPONSE

319 In order to respond to the changes in the industry referred to above, I, together with my team, have developed and adopted a number of measures designed to strengthen Tabcorp's overall offerings.

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320 In particular, Tabcorp has adopted a significant number of measures designed to strengthen its overall pari-mutuel and fixed odds offering in direct response to the increased competition from corporate bookmakers. Some of these measures are described below.

I.1. Launching Luxbet

321 Tabcorp launched Luxbet in September 2008 to more closely replicate the offering of corporate bookmakers by offering products which, at that time, Tabcorp was unable to provide. However, **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Since 2011, Tabcorp has progressively expanded its TAB branded fixed odds business to allow it to offer fixed odds products akin to corporate bookmakers.

I.2. Investment in retail outlets

322 Tabcorp has also invested heavily in its retail outlets to promote retail wagering. Tabcorp works with venues to improve venue design and offerings with the aim of optimising the experience for customers and encouraging wagering through retail outlets. Between June 2011 and June 2016, Tabcorp has provided development funds of approximately **[Confidential to Tabcorp]** [REDACTED] to each of AHA NSW, ClubsNSW and AHA Victoria. These funds have been used for a range of initiatives, including:

- (a) the rollout of Trackside in New South Wales;
- (b) TAB / Sports bar refurbishment packages;
- (c) sports theatre upgrades;
- (d) kiosk unit upgrades; and
- (e) signage upgrades.

323 Apart from these arrangements, Tabcorp has funded equipment investments for retail venues, including approximately **[Confidential to Tabcorp]** [REDACTED] for the purchase of self-service electronic betting terminals for licensed venues, and approximately **[Confidential to Tabcorp]** [REDACTED] million for signage upgrades in licensed venues. Tabcorp sees improving the ease of transactions at retail venues for customers as an important way to compete with services offered by corporate bookmakers, whose services are accessed by customers by easy to use mobile apps.

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324 Tabcorp's current strategic initiatives for retail wagering include **[Confidential to Tabcorp]** [REDACTED]

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

[REDACTED]. Tabcorp is also:

(a) **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]

(c) **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]

(d) **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(e) **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]

(f) **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED].

325 Following the proposed merger, Tabcorp plans to introduce its strategic initiatives and improvements for retail wagering in the states in which Tatts currently operates. This includes:

(a) **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]

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(b) **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(c) **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(d) **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]

(e) **[Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]

326 The total amount Tabcorp has invested in retail upgrades from FY11 – FY16 is around **[Confidential to Tabcorp]** [REDACTED].

I.3. Fixed odds investment

327 In the last five years, Tabcorp has invested **[HIGHLY Confidential to Tabcorp]** [REDACTED] into its fixed odds business and continues to invest approximately **[HIGHLY Confidential to Tabcorp]** [REDACTED] per annum to **[HIGHLY Confidential to Tabcorp]** [REDACTED]. A confidential copy of Tabcorp's total capital expenditure spend on fixed odds over the last five years is attached at **Tab 48 of DF-3 [TBP.014.001.5969]**. Tabcorp has invested in its fixed odds wagering operations **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

328 A substantial part of Tabcorp's fixed odds investment has been focused on **[HIGHLY Confidential to Tabcorp]** [REDACTED]

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[REDACTED]

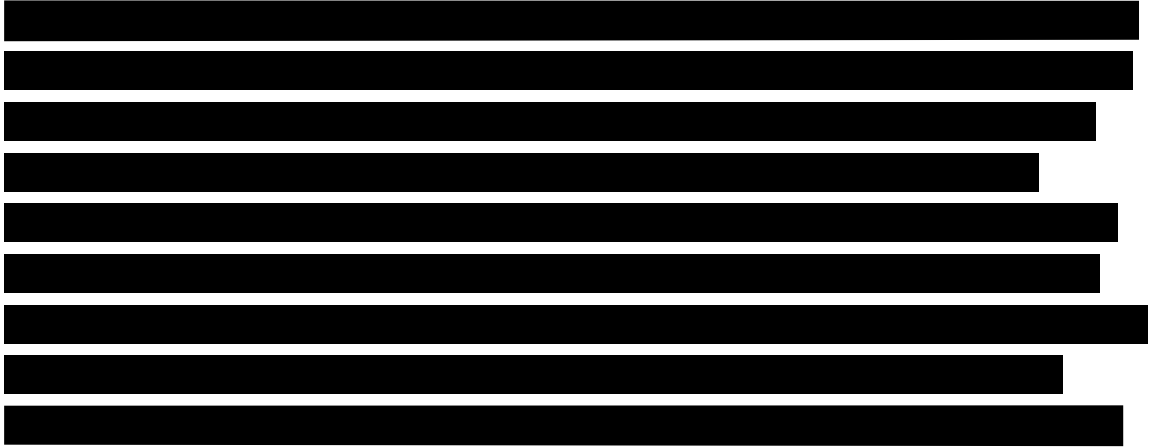
329 **[HIGHLY Confidential to Tabcorp]** [REDACTED]

[REDACTED]

330 Other wagering operators also can, and do, seek to reduce certain customers' wagering limit and bet sizes, or restrict acceptance of certain bets. Compared to the State TABs, it is much easier for corporate bookmakers to manage any fixed odds risk because they know who their customer is in real time, as they only have account customers and do not accept cash bets in any retail venue. With account customers, the wagering operator has the ability to manage any fixed odds risk through electronic means (for example, by freezing a customer's online account, or placing a limit on the bets taken from an online account).

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331 I set out below at **Figure 57** a figure from Tabcorp's FY17 Fixed Odds Business Plan (at **Tab 49** of DF-3 [TBP.001.013.8934]) which shows **[HIGHLY Confidential to Tabcorp]**



332 **[HIGHLY Confidential to Tabcorp]** [Redacted]

(a) **[HIGHLY Confidential to Tabcorp]** [Redacted]

(b) **[HIGHLY Confidential to Tabcorp]** [Redacted]

[HIGHLY Confidential to Tabcorp]

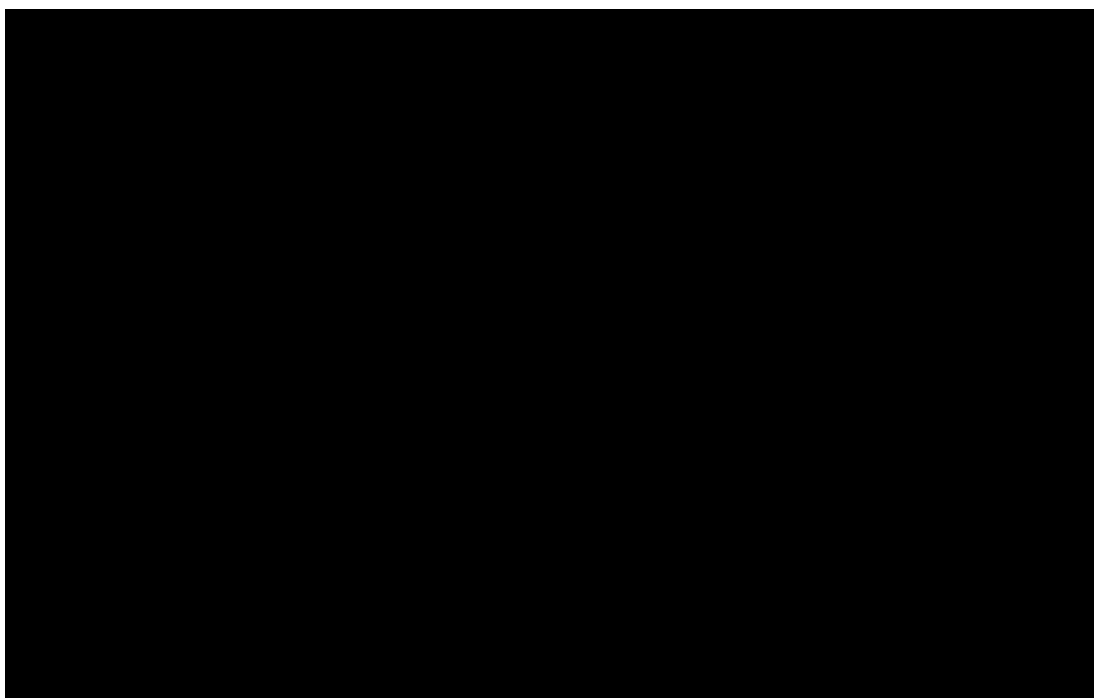
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Figure 57: Overview of Tabcorp's fixed odds risk management system

- 333 Tabcorp's fixed odds management system has been successfully incorporated into recent acquisitions including ACTTAB (in the Australian Capital Territory). Tabcorp did not increase its head count in the Australian Capital Territory to manage its fixed odds system once integrated with ACTTAB.
- 334 Tabcorp's fixed odds bookmaking business has the ability to offer, and offers, many betting markets on a single sport or racing event. For example, there may be up to 70 markets for a standard NRL game, including 'Head to Head', 'Line', 'First Try Scorer' and 'Margin'. The number of markets that it can offer is limited by the capacity of its host systems. Tabcorp's investment in these systems has meant that it is able to offer a larger number and range of markets, and therefore more choice, to its customers. In particular, this investment:
- (a) enables Tabcorp to operate approximately **[Confidential to Tabcorp]** markets per week for its retail and digital platforms (excluding Luxbet). Luxbet offers an average of approximately **[Confidential to Tabcorp]** markets per week which rises to approximately **[Confidential to Tabcorp]** markets per week during peak periods (for example, during key sporting events). I expect that at the very least, most corporate bookmakers would offer similar number of markets as Tabcorp. Some of the larger corporate bookmakers such as Ladbrokes and Sportsbet are likely to offer a higher number of markets than Luxbet. As corporate bookmakers' IT systems do not need to also account for a

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retail system, it is easier for their IT systems to handle a larger number of markets compared to retail operators; and

- (b) enables Tabcorp to predict where a particular betting market is likely to finish, allowing it to offer a greater and more exotic range of betting markets with less risk (such as Swedish harness racing markets, which Tabcorp would ordinarily not have enough data or knowledge to price manually).

335 Tabcorp recently responded to the New Zealand Racing Board's request for a proposal to provide its fixed odds management systems (for both digital and retail platforms) to the NZ TAB. A copy of Tabcorp's confidential response is at **Tab 50 of DF-3 [TBP.011.001.3332]**. That response indicated that **[HIGHLY Confidential to Tabcorp]**

[REDACTED]

I.4. International pooling

336 Tabcorp has continued to expand its international pooling activities through guesting and hosting into international pools. Tabcorp is party to pooling and coverage agreements with a number of international wagering operators. These arrangements allow for the transmission of bets by overseas customers into Tabcorp totalisator pools and the transmission of bets by Australian customers into overseas pools. Corporate bookmakers and Luxbet do not guest or host into international pools as they do not offer totalisator wagering products.

I.5. Investment in new products

337 Tabcorp has introduced new totalisator wagering and fixed odds products in order to compete with corporate bookmakers. For example:

- (a) since it launched Luxbet in 2008, Tabcorp has sought and obtained approval to offer fixed odds wagering products on a range of additional events, including NHL, ice hockey, professional snooker, international rules matches, and US, UK and Australian elections. In addition, Tabcorp has sought to expand the range of bet types it offers to customers;
- (b) in January 2009, Tabcorp introduced a new pari-mutuel wagering product known as the 'Big6', which awards a major dividend to customers who pick the winner in six races nominated by the TAB;

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- (c) in October 2009, Tabcorp established the TAB Rewards loyalty program for New South Wales account customers (which was extended to New South Wales retail customers in New South Wales in July 2013, to account and retail customers in Victoria in October 2013, and to account and retail customers in the Australian Capital Territory in December 2015);
- (d) in early 2011, Tabcorp expanded the range of wagering products available in its retail outlets and online to include a full range of fixed odds wagering;
- (e) in 2011, Tabcorp began offering guaranteed minimum totalisator pools for exotic bet types;
- (f) in 2011, Tabcorp launched Trackside in New South Wales;
- (g) in 2012, Tabcorp expanded its 'Flexi betting' product to include the Quinella, Exacta, Duet and Doubles bet types. Flexi betting allows customers on exotic bet types to make as many selections or combinations as they want, for whatever amount they wish to invest. After the bet is processed, Tabcorp calculates the 'bet percentage' the customer has paid for based on the amount the customer has actually spent. If successful, the customer collects the 'bet percentage' of the winning dividend;
- (h) in 2012, Tabcorp introduced 'Super Multi' betting. In traditional Multi betting, a customer bets on a number of different fixed odds sports and/or racing options (each of which is referred to as a 'leg'), and only wins if all legs are successful. Super Multi betting allows a customer to select multiple combinations within the same Multi, giving them more ways to win;
- (i) in 2015, Tabcorp launched its 'Cash Out' product, which allows customers to cash out of pending multi or single fixed odds bets before the result. This product is also offered by the major corporate bookmakers and Tatts in Australia. Like other wagering operators, Tabcorp also offers a 'Partial Cash Out' product, which allows customers to take an early payment for part of a pending fixed odds bet before the final result is known. The remaining potential collect from the bet is reduced in line with the portion of the bet partially cashed out;
- (j) in 2014, Tabcorp introduced the 'early Quaddie', which allows customers to place Quaddie bets on typically (but not necessarily) the first four races of the day, as well as on the last four races of the day through the existing Quaddie product;

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- (k) in 2016, Tabcorp extended its 'Cash Out' and 'Partial Cash Out' products to include the 'Quaddie Cash Out', which allows customers to cash out their Quaddie at any time – fully or partially – after the running of the first leg; and
- (l) over the past number of years, Tabcorp has offered a range of products to attract customers to bet on the totalisator including:
 - i offering bonus bets and cash-back offers equal to a customer's stake (capped at a certain amount) to customers who placed a pari-mutuel bet on a race, where their horse did not win but finished second or third;
 - ii offering jackpots or guaranteed minimum pools;
 - iii offering a range of unique experiences, including a promotion where customers could 'own a stake' in a racehorse for a day;
 - iv offering account customers bonus TAB Reward points for totalisator bets placed across particular race meetings (such as the County and Provincial Championships); and
 - v offering account customers loyalty badges that can be earned for totalisator bets placed across consecutive race meetings (for example during the Country and Provincial Championships) that accrue for additional bonus TAB Rewards points.

338 As indicated in **Tab 12 of DF-1 [TBP.001.027.1737]**, there are 7 bet types offered by Tabcorp that Tatts currently does not offer and 3 bet types offered by Tatts that Tabcorp does not currently offer. Following the proposed merger, Tabcorp currently plans to offer the full range of bet types currently offered by both Tabcorp and Tatts across the merged entities' operations. This will be subject to further commercial considerations and obtaining any relevant and necessary regulatory approvals and systems and information technology changes (which may take some time). Although the process for obtaining approval for new bet types differs for each jurisdiction based on the applicable legislation I would anticipate that in respect of bet types for which Tabcorp has previously obtained approval, the merged entity will generally be able to obtain approval and I am unaware of any particular regulatory reasons why this could not occur.

I.6. Improved digital offering

339 Tabcorp has invested significantly in its digital offering, including re-designing its website and phone apps and introducing live streaming of racing on both of these. At a high level, Tabcorp's digital strategy over the last four years has involved:

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- (a) developing a new, contemporary code base and web interface;
- (b) re-factoring the app code base, as well as refreshing the app experience for customers including the addition of new features (with a particular focus on mobile); and
- (c) ongoing work to ensure digital assets are performing optimally and are capable of processing consistently increasing transaction volumes.

340 Tabcorp's digital strategy is reflected in its growing in-house digital team and capital investment:

- (a) Tabcorp has substantially increased its in-house digital team and capability in the past few years – head count has increased from three in FY2013 to 95 in FY2016; and
- (b) over the same period, Tabcorp's capital investment has also grown, with a compound annual growth rate of **[Confidential to Tabcorp]** over the last four years.

341 The total amount Tabcorp has invested in these measures from FY11 – FY16 is around **[Confidential to Tabcorp]**.

I.7. Reduced market percentage

342 Tabcorp has reduced its market percentage for certain sports betting products in the past number of years. By way of illustration, for head-to-head betting on 'top level' sports such as NRL and AFL, Tabcorp has reduced its market percentage from approximately **[Confidential to Tabcorp]** in 2006 to around **[Confidential to Tabcorp]** in 2016. Similarly, Tabcorp has reduced its market percentage for multi-betting (which is a large component of sports betting), as shown in **Figure 58** below:

[Confidential to Tabcorp]

Year	Number of legs			
	2	3	4	5
2006	[Confidential to Tabcorp]	[Confidential to Tabcorp]	[Confidential to Tabcorp]	[Confidential to Tabcorp]
2016	[Confidential to Tabcorp]	[Confidential to Tabcorp]	[Confidential to Tabcorp]	[Confidential to Tabcorp]

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Year	Number of legs			
Variance				

Figure 58: Tabcorp's market percentage for multi-betting

I.8. TAB Rewards

343 Tabcorp set up the TAB Rewards loyalty program for New South Wales account customers in October 2009. It was extended to retail customers in New South Wales in July 2013, to account and retail customers in Victoria in October 2013, and to account and retail customers in the Australian Capital Territory in December 2015. This program allows customers to gain points (e.g. when they sign up to the program, on their birthday, as prizes). The points can be redeemed for free bets and other 'soft' rewards (e.g. gift cards and vouchers, tickets to sporting events, BBQs, jewellery, and sporting apparel). TAB Rewards membership provides other benefits, including free entry to race days and entry into competitions by opting in online. The total value of rewards that Tabcorp has provided to customers since this program was set up is approximately **[Confidential to Tabcorp]** [REDACTED].

I.9. Longitude

344 In February 2016, Tabcorp entered into an agreement with Longitude, SA. Longitude has developed a pari-mutuel betting system that offers a number of advantages over traditional pari-mutuel platforms. The Longitude system enables pools to be aggregated (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 on Tabcorp's existing technology. Longitude also provides an improved customer information interface. Tabcorp intends to offer bets using the Longitude system from December 2017, subject to the receipt of regulatory approvals, racing industry approvals and the finalisation of information technology integration work. Tabcorp has, or will, invest approximately **[Confidential to Tabcorp]** [REDACTED] in its purchase of Longitude which investment will allow it to expand its pari-mutuel offering to compete better with fixed odds products.

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I.10. Bonus bets and promotions

345 By way of example, Tabcorp has offered bonus bets and cash refunds where a customer places a win bet and their choice comes second or third. Promotions Tabcorp has offered include:

- (a) **Trifecta Insurance Promotion**, where the customer receives a refund (in bonus bets or account top-ups) where they have 2 correct selections out of 3 for selected races;
- (b) **Account-opening promotions**, for example matching customer deposits with bonus bets on account opening; and
- (c) **Direct responses to corporate bookmakers' promotions**: Tabcorp has introduced and is currently considering direct responses to corporate bookmakers' promotions, which include:
 - i the introduction of the 'Fair Go' program, where unsuccessful customers are given bonus bets in circumstances where the outcome of an event changes (such as when the winning contestant is disqualified or relegated). This aims to respond to corporate bookmaker promotions such as 'Badbeat' and 'Justice Payout', where customers' bets are refunded when they lose because of a decision perceived to be 'unfair' by customers; and
 - ii **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

The total amount Tabcorp has spent on the 'Fair Go' program since it began offering this is around **[Confidential to Tabcorp]** [REDACTED].

J. Form S information

346 I have been asked to provide a list of cooperative agreements relating to the Australian wagering market to which Tabcorp is a party for the purposes of Tabcorp's application for merger authorisation. I set these out in **Tab 20** of **DF-2 [TBP.001.029.0008]**.

347 I have also been asked to provide the names and contact details of a representative selection of suppliers of inputs to Tabcorp's wagering business in the Australian wagering market for the purposes of Tabcorp's application for merger authorisation. A

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table setting out a representative selection of suppliers is at **Tab 21** of **DF-2** **[TBP.001.029.0014]** (with highly confidential information redacted) and **Tab 51** of **DF-3** **[TBP.001.027.6634]**.

Signature of witness



Name of witness

Douglas John Freeman

Date of signature

8 March 2017