

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2017

Re: Application by Tabcorp Holdings Limited under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Applicant: Tabcorp Holdings Limited (ACN 063 780 709)

DIRECTIONS

TRIBUNAL: Justice Middleton (President)

DATE OF ORDER: 17 March 2017

WHERE MADE: Melbourne



THE TRIBUNAL DIRECTS THAT:

Third parties and applications to intervene

1. Tatts Group Limited (**Tatts**) is granted leave to intervene in the proceedings.
2. If any other person or entity seeks leave to intervene in the proceedings, that person or entity shall file with the Tribunal and serve on the Applicant, Tatts and the Australian Competition and Consumer Commission (**Commission**) an application and supporting material by Friday 24 March 2017.
3. The Applicant and the Commission to file and serve any submissions in relation to any application for leave to intervene in the proceeding (other than Tatts) by Monday, 3 April 2017, following which the Tribunal will determine the application on the papers, unless any party notifies the Tribunal within 24 hours of the service of such submissions that they require a hearing to resolve the application, such hearing to be held at such time as the Tribunal may order.

Documents

4. The Commission has leave to provide to the Tribunal at any time up to 2 weeks prior to the date by which the Commission must file its report pursuant to paragraph 12 of these

orders details of any information that the Commission suggests the Tribunal seek from the Applicant or any other person pursuant to ss 95AZC and 95AZD(1) of the *Competition and Consumer Act 2010* (Cth) (**Act**), such requests to be notified to all other parties at the time of the request.

5. Should any party object to any of the categories of information proposed by the Commission, it is to notify the Tribunal and all other parties of the reason for those objections within 3 days of the receipt of the request made pursuant to paragraph 4 of these orders. The intention is that except in exceptional circumstances any such objection are to be dealt with on the papers.
6. The Applicant, any intervener in the proceedings, and any other person must provide to the Tribunal the information required by any written notice given by the Tribunal pursuant to ss 95AZC and 95AZD(1) of the Act arising from paragraph 4 of these orders within 7 days of such notice, or such other time as the Tribunal may order.

Confidentiality

7. The Commission is to file and serve any objections to confidentiality claims made by the Applicant, Tatts or any other intervener within 7 days of receipt of the confidentiality claim. Any objections are to be dealt with on the papers, unless any party notifies the Tribunal within 24 hours of the receipt of reasons for objections that they require a hearing to resolve these objections, such hearing to be held at 9am AEST on Wednesday 29 March 2017, or such other time or date as the Tribunal may order.

Report, Submissions and Hearing

8. The Commission must provide to the Tribunal, the Applicant and Tatts an Issues List identifying key issues raised by the Application by Monday 27 March 2017 which the Tribunal will publish on its register.
9. Any intervener (other than Tatts) in the proceedings is to lodge and serve on the Applicant, the Commission and Tatts any proposed evidence by 5.00pm AEST on Friday 31 March 2017.
10. Submissions and supporting material in relation to the Application by interested third parties are to be filed with the Tribunal and served on the Applicant, the Commission, Tatts and any other intervener by Wednesday 5 April 2017.
11. A second case management conference is to be provisionally held at 9.30am AEST on Friday 7 April 2017 or such other time as the Tribunal may order.



12. The Commission must file and serve on each party electronically a report pursuant to s 95AZEA of the Act and any evidence or other material upon which it seeks to rely by Thursday 27 April 2017.
13. If the Commission, as part of its report pursuant to s 95AZEA of the Act relies on any expert evidence:
 - (a) experts briefed by the Commission or any intervener are to confer with experts briefed by the Applicant at a time that is convenient to the experts between Monday 8 May 2017 and Wednesday 10 May 2017 and are to prepare an agreed note of matters about which they agree and disagree together with the reasons for any disagreement as a result of that conferral by Friday 12 May 2017; and
 - (b) the question of whether the expert evidence will be given concurrently will be addressed by the parties at the third case management conference.
14. The Applicant, and Tatts, shall file electronically by Monday 8 May 2017 any material or evidence in reply to the Commission's report (and any other Commission evidence or material), and any material and evidence in reply to any intervener (other than Tatts).
15. The Applicant, and Tatts, are to file and serve an outline of submissions by 4.00pm AEST on Monday 8 May 2017.
16. The Applicant is to serve on the Commission, Tatts and any other intervener (subject to the orders of the Tribunal regarding confidentiality) a draft Hearing Book Index listing all documents annexed or exhibited to any witness statement and any other document proposed to be relied upon at the hearing by 4.00pm AEST on Tuesday 9 May 2017.
17. The Commission, Tatts and any intervener is to serve on the Applicant, each intervener and the Commission a list of proposed amendments to the Hearing Book Index by 4.00pm AEST on 10 May 2017.
18. A third case management conference to determine preliminary issues including third party rights and any outstanding confidentiality issues is to be provisionally held at 9.30am AEST on Thursday 11 May 2017 or such other time as the Tribunal may order.
19. The Applicant must file and serve on the Commission and Tatts electronically a Hearing Book containing all statements and reports proposed to be relied on by the Applicant, the Commission, Tatts or any other intervener at the hearing by 6.00pm AEST on Thursday 11 May 2017. The provision of a Hearing Book to an intervener (other than Tatts) will be subject to further orders of the Tribunal, including in relation to confidentiality.



20. The Commission, and any intervener (other than Tatts) (subject to the leave of the Tribunal), are ordered to file and serve outlines of submissions by 4.00pm AEST on Friday 12 May 2017.
21. Lists of authorities to be relied on by the Applicant and Tatts at the hearing must be filed and served on the Tribunal, the Commission, and any other intervener by 4.00pm AEST on Monday 8 May 2017.
22. Lists of authorities to be relied on by the Commission and any intervener (other than Tatts) at the hearing must be filed and served on the Tribunal, the Applicant and Tatts by 4.00pm AEST on Friday 12 May 2017.
23. The hearing in this matter commence in Melbourne on Tuesday 16 May 2017 for 14 days.

Other Matters

24. Any notice given, or materials that are filed and served in these proceedings may be given or filed and served by email to the following email addresses:
 - (a) Email address for the Registry is registry@competitiontribunal.gov.au.
 - (b) Email address for the Applicant is grant.marjoribanks@hsf.com and smuys@gtlaw.com.au.
 - (c) Email address for the ACCC is simon.uthmeyer@dlapiper.com.
 - (d) Email address for Tatts is mcorrigan@claytonutz.com.
25. Any communication to the Tribunal is to be copied to all other parties by email to the email addresses in order 24, unless the Tribunal otherwise orders.
26. The Applicant, the Commission, Tatts, any other intervener, and any interested person are to have general liberty to apply for further directions.
27. In relation to evidence filed by the Applicant, Tatts and any other intervener on or by Tuesday 18 April 2017, the Applicant, the Commission, Tatts, and any other interveners (subject to the leave of the Tribunal) are to give notice to the Tribunal and to the other parties, which:
 - (a) identifies any witnesses that they wish to cross-examine; and
 - (b) notifies the other parties of any objections to the proposed evidence, by Tuesday 25 April 2017.
28. In relation to any evidence filed in this application that is not the subject of order 27, the Applicant, the Commission, Tatts, and any other interveners (subject to the leave of the Tribunal) are to give notice to the Tribunal and to the other parties, which:
 - (a) identifies any witnesses that they wish to cross-examine; and



- (b) notifies the other parties of any objections to the proposed evidence, within three days of receipt of the proposed evidence.
29. The Applicant, the Commission, Tatts and any other intervener must confer with a view to resolving any notified objections to witness statements by Thursday 11 May 2017.
30. The Applicant, the Commission, Tatts and any other intervener (subject to the orders of the Tribunal regarding confidentiality) are to exchange and provide to the Tribunal a list of objections to witness statements and documents that are unable to be resolved by agreement by 4.00pm AEST on Friday 12 May 2017.

Date entered: 20 March 2017



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

REGISTRAR
Australian Competition Tribunal