

IN THE AUSTRALIAN COMPETITION TRIBUNAL

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

STATEMENT



Statement of: Michael Paul Wilson
Address: Orpington Street, Ashfield NSW 2131
Occupation: Chief Executive Officer of Ashfield Bowling Club
Date: 27 April 2017

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
Email	Simon.Uthmeyer@dlapiper.com		
Address for service	DLA Piper 140 William Street Melbourne VIC 3000		

I, **Michael Paul Wilson**, of Orpington Street, Ashfield NSW 2131, Chief Executive Officer, say as follows:

1. I am the licensee and Chief Executive Officer of Ashfield Bowling Club, a bowling club in the inner western suburbs of Sydney. I have worked at Ashfield Bowling Club for nearly 20 years and I was appointed licensee and Chief Executive Officer in 2004. I am authorised to make this witness statement on behalf of Ashfield Bowling Club.
2. I make this statement in relation to an application by Tabcorp Holdings Limited (**Tabcorp**) to the Australian Competition Tribunal for the authorisation of the proposed merger of Tabcorp and Tatts Group Limited.

Ashfield Bowling Club

3. Ashfield Bowling Club (**ABC**) is a registered club in New South Wales. It was established in 1889 to provide bowling facilities to the local community.
4. Ashfield Bowling Club provides lawn bowls and club facilities to its members (currently there are nearly 500) and their guests. As well as lawn bowl facilities, ABC has a bistro, a bar and wagering and gaming facilities. The wagering offering comprises a TAB facility and Sky vision. The gaming offering comprises 10 gaming machines. Ashfield Bowling Club also has a Keno facility.

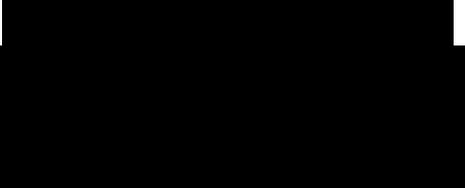
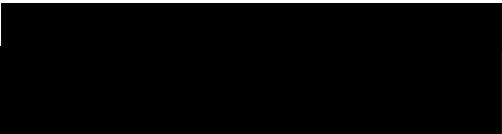
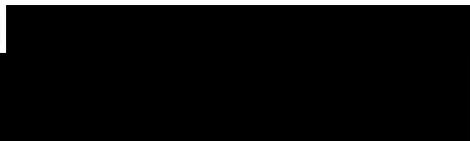
Wagering facilities and Sky at Ashfield Bowling Club

Contracts for the TAB facility and Sky

5. ABC's wagering offering comprises a TAB facility, which consists of one eBET terminal, three computers (one is the gateway to run the eBET terminal and the other two are for customers to use) and three screens (which show Sky Racing 1, Sky Racing 2 and a digital channel called Trackside). Together, these are referred to as "the kiosk" and they are provided by Tabcorp.
6. ABC first entered into an agreement with Tabcorp for the TAB facility in July 2012. The initial contract period was for two years. When that two year period was up, Tabcorp did not ask ABC to sign a new contract and I understand that the original agreement continued on a month to month basis, with a 60 day notice period if ABC wished to terminate the agreement. I understand that this agreement was in place until about a month ago, when a new agreement came into operation (which is

discussed in more detail below). A copy of the original agreement with Tabcorp for the TAB facility (called a "Licensed Venue TAB Distribution Services Agreement") is marked as [HIGHLY Confidential to Tabcorp] Annexure "MPW-1" and attached to this statement.

7. Under the agreement with Tabcorp referred to above:

- (a) [HIGHLY Confidential to Tabcorp] 
- (b) [HIGHLY Confidential to Tabcorp] 
- (c) [HIGHLY Confidential to Tabcorp] 
- (d) [HIGHLY Confidential to Tabcorp] 

8. Racing vision (through Sky) is an essential part of the wagering offering, because if customers cannot watch races, they will not place any bets on races. The three screens that form part of the kiosk referred to above show Sky Racing 1, Sky Racing 2 and a digital channel called Trackside (which is also part of the Sky channels). Sky is provided by Sky Channel Pty Ltd (Sky Channel), which is part of Tabcorp. ABC first entered into an agreement with Sky Channel for the TAB facility in July 2012, at the same time as ABC entered into an agreement with Tabcorp for the TAB facility. The TAB facility and Sky go hand in hand – you cannot have the TAB facility without Sky. A copy of the agreement with Sky Channel (called "Sky Racing Licence Agreement") is marked as [HIGHLY Confidential to Tabcorp] Annexure "MPW-2" and attached to this statement.

9. Under the agreement with Sky Channel referred to above:

- (a) [HIGHLY Confidential to Tabcorp] [REDACTED]
- (b) [HIGHLY Confidential to Tabcorp] [REDACTED]

Revenue and costs associated with the TAB facility and Sky

- 10. The TAB facility is a loss leader for ABC. For the current financial year, ABC has made commission from the TAB facility of, on average, [HIGHLY Confidential to Tabcorp] [REDACTED]. There are various costs associated with the TAB facility, including a rental charge for the kiosk and the cost of the Sky subscription, as detailed below.
- 11. ABC rents the kiosk from Tabcorp at a cost of [HIGHLY Confidential to Tabcorp] [REDACTED]. This rental charge is higher than the commission ABC earns from the TAB facility and is deducted from the commission ABC earns, which means that ABC pays money to Tabcorp to have the TAB facility. Tabcorp deducts the amount owed by ABC from ABC's bank account by direct debit every Monday night.
- 12. On top of the rental charge, ABC pays [HIGHLY Confidential to Tabcorp] [REDACTED] to Sky Channel for Sky. The cost of Sky is deducted from ABC's bank account on the 15th day of each month.
- 13. When ABC first signed up with Tabcorp for the TAB facility, Tabcorp offered the following rebates because ABC was (and still is) a small club in terms of its turnover from wagering:
 - (a) a [REDACTED] on the rental charge for the kiosk, which meant that ABC would pay a rental charge of [HIGHLY Confidential to Tabcorp] [REDACTED];
 - (b) a rebate of [HIGHLY Confidential to Tabcorp] [REDACTED] for Sky, which was referred to as the "Sky Channel Rebate".
- 14. Tabcorp withdrew the rebate on the kiosk rental charge on 30 June 2013. At the time it was withdrawn, the Tabcorp representative told me that the rebate had stopped

because it was not an ongoing rebate. The effect of this was that ABC incurred an additional [HIGHLY Confidential to Tabcorp] ██████████ in respect of the wagering facilities (including Sky) after the first year. That figure is significantly more than the commission ABC earns from the TAB facility.

15. After taking into account the costs associated with the wagering facilities (but before taking overheads into account), ABC incurs a loss of approximately \$13,000 a year in providing wagering facilities for its members and their guests. This figure takes into account the rebate that ABC receives from Tabcorp. Despite incurring a loss on the wagering facilities, ABC's Board of Directors has made a commercial decision to continue to offer these facilities, because our competitors have wagering facilities and our members expect it. If we did not have the wagering facilities, our members would go to competitors, such as other clubs and TAB retail facilities in the area.
16. In my dealings with Tabcorp and Sky Channel, I have not had any real ability to negotiate on the terms of the contracts, including products and services offered, commission earned on wagering or the cost of Sky. In my experience with Tabcorp and Sky Channel, you either accept the terms they present, or you don't have wagering facilities.

Recent presentation by Tabcorp representative

17. Our Tabcorp representative generally visits our Club less than four times a year. However, within a week or two of an announcement recently made by ClubsNSW, our Tabcorp representative, Cathy Nigro, rushed in to visit me. The announcement by ClubsNSW was made in around February 2017 and related to a deal that ClubsNSW has reached with CrownBet for CrownBet to provide digital wagering facilities to clubs in NSW. The reason for Ms Nigro's visit was to do a presentation about Tabcorp's offering and the terms of the new agreement for the TAB facility.
18. The presentation was done on an iPad and took about 45 minutes. Ms Nigro presented to me on what she said were Tabcorp's major selling points. For example, she said that Sky broadcasts 120,000 races per year, which plays an integral part in drawing customers to venues. During the presentation, Ms Nigro told me that Tabcorp has a new agreement for the TAB facility, which will take over from the existing agreement between Tabcorp and ABC, and she told me about some of the terms of the new contract. For example:

(a)

[HIGHLY Confidential to Tabcorp]

(b)

(c)

19. Ms Nigro emailed the presentation to me afterwards. Attached to this statement and marked [HIGHLY Confidential to Tabcorp] Annexure "MPW-3" is a copy of the presentation that Tabcorp sent to me by email.
20. At the end of the presentation, I asked Ms Nigro whether I needed to sign anything and she said that the existing agreement would automatically roll over to the "new commercial proposition" at the end of March / start of April 2017. She did not give me the opportunity to consider the terms of the proposed new contract, but simply told me that it would apply from the end of March / start of April 2017.

Concerns in relation to wagering facilities and the proposed merger

Concerns in relation to wagering facilities

21. ABC would like to have the option of entering into a contract with CrownBet (or another provider) for digital wagering facilities if the Board considers it will benefit ABC and its members. The Board is interested in ABC providing a more attractive betting facility, especially if it can be done at a lower cost. My concern is that this will not be possible for the following reasons.
- (a) ABC could not offer a digital wagering facility, such as one provided by CrownBet, alone and could only offer it alongside the TAB retail wagering

facility. This is because the majority of ABC's customers still bet in cash and some will be reluctant to move to a digital offering. Therefore, if ABC is going to offer a digital wagering facility, it is important that it is offered alongside the TAB facility.

- (b) Based upon the presentation from Ms Nigro referred to above, I understand that Tabcorp requires ABC to exclusively offer Tabcorp's wagering facilities. That is, if ABC wishes to keep the TAB facility, it will not be able to offer a digital wagering facility from any other provider, such as CrownBet.
- (c) This means that ABC has no choice but to continue exclusively using Tabcorp for its wagering facilities.

22. I am very concerned about the price of Sky if the proposed merger proceeds. As explained earlier in this statement, ABC pays [HIGHLY Confidential to Tabcorp] ██████████ per month for Sky. I believe that this amount is already well above what it should be and does not represent value for money. However, ABC has no ability to negotiate with Sky Channel in relation to the price of Sky (or anything else) and, if we want to continue to offer a wagering facility to our members (which we do, otherwise they will go elsewhere), then we have no choice but to pay the very high price that Sky Channel demands for Sky. I am concerned that the merged entity will have more power than it currently has and will be able to withdraw rebates and change prices, as Tabcorp has already done as explained above. If the price of Sky increases, ABC's Board will need to consider whether ABC can continue to justify the cost of retaining Sky. An increase of \$200 per month would be enough for ABC to seriously consider whether it is commercially viable for ABC to continue to offer wagering facilities for its members.

23. If the proposed merger proceeds, I am concerned that the merged entity will have almost complete control of the gambling market, in that it will be the only provider of retail wagering facilities and Sky in all states except Western Australia. Based on my experience in dealing with Tabcorp, it adopts the position: "it's our way or no way". I am concerned that if the merger proceeds, this level of power that Tabcorp already has will extend into other states. The merged entity will have the power to force licensed venues, especially small clubs like ABC, to agree to exclusivity clauses, to increase the price of Sky and to withdraw rebates (which has happened in the past).

Dated: 27 April 2017

Signed: 

Michael Paul Wilson

INDEX OF ANNEXURES TO STATEMENT OF MICHAEL PAUL WILSON

Annexure	Title	Confidentiality
MPW-1	Licensed Venue TAB Distribution Services Agreement	Highly Confidential – Restriction of publication of whole document claimed
MPW-2	Sky Racing Licence Agreement	Highly Confidential – Restriction of publication of whole document claimed
MPW-3	Tabcorp presentation	Highly Confidential – Restriction of publication of whole document claimed

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Applicant: Tabcorp Holdings Limited

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**MPW-1**" annexed to the statement of **Michael Paul Wilson** dated 27 April 2017.

Highly Confidential Annexure "MPW-1"

Licensed Venue TAB Distribution Services Agreement

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
Email	Simon.Uthmeyer@dlapiper.com		
	DLA Piper		
	140 William Street		
Address for service	Melbourne VIC 3000		

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Applicant: Tabcorp Holdings Limited

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**MPW-2**" annexed to the statement of **Michael Paul Wilson** dated 27 April 2017.

Highly Confidential Annexure "MPW-2"

Sky Racing Licence Agreement

Filed on behalf of	Australian Competition and Consumer Commission		
Prepared by	Simon Uthmeyer		
Law firm	DLA Piper		
Tel	+61 3 9274 5470	Fax	+61 3 9274 5111
Email	Simon.Uthmeyer@dlapiper.com		
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Applicant: Tabcorp Holdings Limited

ANNEXURE CERTIFICATE

This is the highly confidential annexure marked "**MPW-3**" annexed to the statement of **Michael Paul Wilson** dated 27 April 2017.

Highly Confidential Annexure "MPW-3"

Tabcorp presentation

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Law firm	DLA Piper		
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Email	Simon.Uthmeyer@dlapiper.com		
Address for service	DLA Piper		
	140 William Street		
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