

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: Timothy James Wright
Address: 54 Anzac Avenue, Hillcrest QLD 4118
Occupation: Board Member of the RSL & Services Clubs Association Queensland Inc and General Manager of Greenbank RSL Services Club Inc
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 | | |
| | DLA Piper | | |
| | 140 William Street | | |
| Address for service | Melbourne VIC 3000 | | |

I, **Timothy James Wright**, of 54 Anzac Avenue, Hillcrest QLD 4118, Board Member and General Manager, say as follows:

1. I am a Board Member of the RSL & Services Clubs Association Queensland Inc (**RSLCAQ**). I have held this position since 2014. I am authorised to speak on behalf of RSLCAQ.
2. I am also the General Manager of Greenbank RSL Services Club Inc (**Greenbank RSL**) and I have held this position since January 2011.
3. 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 Tatts Group Limited (**Tatts**) and Tabcorp.

RSLCAQ

4. RSLCAQ represents licensed RSL & Services Clubs operating in Queensland. RSLCAQ has about 94 member clubs, ranging from small clubs to large clubs. The clubs offer entertainment and leisure facilities to their members and guests, such as bars and restaurants, wagering and gaming. The clubs provide financial and in-kind support to returned servicemen and servicewomen, directly and through the support of their local RSL sub-branches. RSLCAQ's member clubs also support other community groups.
5. The majority of RSLCAQ's member clubs have electronic gaming machines (**EGMs**). The clubs either use the monitoring and gaming services of Maxgaming (which is owned and operated by Tatts) or the monitoring services of Odyssey and gaming services of eBET (which are both owned and operated by Tabcorp).

Greenbank RSL

6. Greenbank RSL is an Incorporated Association and is one of the largest RSL clubs in Queensland. It has approximately 85,000 members. It is a community-based club that provides facilities to its members and their guests, such as bars, cafes and restaurant and wagering and gaming facilities, functions, RSL memorial services, a Men's Shed (a community program that provides support for men) and an Administration Facility for our sub-branch to provide welfare work. Greenbank RSL, through its sub-branch (which is a separate incorporated association), distributes profits of the club by giving financial support and donations to community groups, as

well as direct support to Greenbank RSL's sub-branch. In turn, Greenbank RSL's sub-branch provides welfare services, support for housing, household items and medical services to current and past serving members of the Defence Force and their families. It also provides financial support to community groups including schools, hospitals, the Gallipoli Foundation, Guide Dogs Queensland, Gidget Foundation, PCYC and the RSPCA, as well as other local charities, community groups and individuals.

7. As the General Manager, I am responsible for the complete operations and financial viability of the Club. My responsibilities include regulatory compliance, finances and dealing with suppliers and service providers.
8. In relation to its wagering and gaming facilities, Greenbank RSL has a retail wagering facility (known as the "**TAB facility**"), Keno and 300 EGMs. Greenbank RSL also has Sky Racing, which is shown on screens throughout the Sports Bar and TAB area, and is an essential part of the wagering facility.
 - (a) The TAB facility is provided by Tatts/UBET. Tatts is the only permitted provider of the TAB facility in Queensland.
 - (b) Sky Racing is provided by Sky Channel Pty Ltd (**Sky Channel**), which is part of Tabcorp.
 - (c) The Keno facility is provided by Tabcorp.
 - (d) EGM monitoring services are provided by Odyssey and the in-venue gaming services are provided by eBET, which are both part of Tabcorp.

Wagering facilities and Sky Racing at Greenbank RSL

9. The agreement Greenbank RSL has with Tatts/UBET for the TAB facility is a TAB Agency Agreement (**TAB Agreement**). The term of the TAB Agreement is usually between three to five years. Greenbank RSL is in the process of renewing its TAB Agreement. Greenbank RSL receives commission on turnover on a sliding scale downwards (i.e. as turnover increases, commission decreases. The commission is **[HIGHLY Confidential to Tatts]** [REDACTED]
[REDACTED]
Currently, Greenbank RSL receives commission of **[HIGHLY Confidential to Tatts]** [REDACTED] on retail wagering turnover based on its level of turnover per week. Greenbank

RSL also pays equipment rental fees, which are calculated on the basis that fees reduce as TAB wagering turnover increases. These fees are paid on the "ClubTab Office" which includes the TAB terminals, TVs, EFTPOS terminals, printers and a branch controller.

10. Greenbank RSL has an agreement with Sky Channel to subscribe to Sky Racing vision (**Sky Agreement**), which I believe was put in place in the mid-1990s. Sky Racing is an essential part of the wagering facilities – you can't have the TAB facility without Sky Racing, because no one will bet on a race if they can't watch it. The terms of the TAB Agreement states that **[HIGHLY Confidential to Tatts]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
11. The cost of Sky Racing to Greenbank RSL is approximately **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]. The price of Sky Racing is calculated according to rate cards. For Sky Racing, Greenbank RSL pays a "weekly entertainment access fee" of \$225, which is based on the geographic location we are in, plus a variable fee of 0.625% of our annual weekly wagering turnover (capped at \$45,000 per week). I expect that Tatts provides Sky Racing with the information it needs to calculate the variable component, because Greenbank RSL does not directly provide that information to Sky Racing. There is normally a CPI increase to the price each year. About three years ago, Sky Channel told clubs that it was substantially increasing the price of Sky Racing, well beyond CPI increases. However, the industry pushed back on this and the price increase did not go ahead.
12. There are a number of costs associated with operating the TAB facility, including staff wages and the cost of the Sky Racing subscription. After taking these costs into account, Greenbank RSL makes a loss of approximately \$7,500 a month (equivalent to approximately \$90,000 per year) on the wagering facilities. Although we make a loss, we continue to offer the wagering facilities because it is a loss-leader and has flow-on effects to other parts of the club, such as increased restaurant and bar sales.

Digital wagering

13. In recent years, I have observed a gradual decline in revenue from Greenbank RSL's wagering facilities. There has not been any direct reduction in the headcount of people coming through the door at Greenbank RSL, so I believe this decline is because of the shift from retail wagering to digital wagering. I am also aware of our regular patrons placing bets online through corporate bookmakers, such as CrownBet and Bet365, because they have told me they do that and they have also said that the odds are far superior. The cash wagers that Greenbank RSL is taking in through the TAB facility have declined by about 20% to 25% over the last few years. This is at a time when I believe wagering overall (both retail wagering and digital wagering) has increased, because of the rise of corporate bookmakers and increased advertising for wagering on sport.
14. This shift from retail wagering to online wagering is an issue of concern for clubs in Queensland, because clubs incur significant costs in maintaining their retail wagering facilities. People visit clubs to use the facilities and watch Sky Racing, but they are increasingly placing bets online on their phones and the clubs do not earn any commission on those bets.
15. Greenbank RSL does not receive commission from Tatts when patrons in our club place online bets through their Tatts accounts. About two years ago, I, together with other members of the RSLCAQ, raised the idea of clubs receiving trailing commission on digital bets placed by clubs' patrons from within their premises with Tatts' CEO, Robbie Cooke. He said at the time Tatts was not looking at paying commission on digital wagering.
16. The regulator for wagering and gaming in Queensland, the Office of Liquor and Gaming, has told clubs that it is unlawful for clubs to facilitate wagering by any provider other than Tatts and it is therefore unlawful for clubs to offer digital wagering facilities. Based on the information I have received from the regulator, I understand that clubs in Queensland cannot currently enter into relationships with other wagering providers, such as corporate bookmakers, to provide digital wagering facilities. For this reason, I have not considered any digital wagering offerings from corporate bookmakers.

Concerns about wagering facilities and Sky Racing if the proposed merger proceeds

17. I have two concerns if the proposed merger proceeds. The first is the potential for the merged entity to price gouge in relation to the price of Sky Racing by significantly increasing the price of it. The second is that the merged entity may restrict vision.
18. In relation to potential price gouging, I hold this concern because Sky Channel has tried to significantly increase the price of Sky Racing in the past (as explained in paragraph 11 above). If the merged entity increases the price of Sky Racing significantly, it may not be viable for many clubs (especially smaller clubs) to continue to offer retail wagering facilities. This is because they will be losing too much money on the retail wagering facilities once the cost of Sky Racing is taken into account. If that happens, clubs risk losing customers to other clubs in the area that can afford to offer retail wagering facilities.
19. In relation to restricting vision, I hold this concern because of what Sky Channel did when Thoroughbred Vision (**TVN**) tried to enter the racing vision market around 2005-2009. TVN tried to enter the market to provide thoroughbred racing vision. At the time, I did not work at Greenbank RSL, but I worked at another club that had a TAB facility. Around that time, TVN started having discussions with clubs about its product and services. When it did that, Sky Channel restricted racing vision by cutting the Sky Racing signal to clubs for certain races, including the club I was working at. I recall that there was backlash from customers because they could not watch certain races. Although the Sky Racing signal was cut for certain races, the club I was working at still had to pay the full subscription fees for Sky Racing.
20. If the merger proceeds, I am concerned that Tabcorp will have a lot more power to change its price models, price gouge clubs, or otherwise try to maximise the value it gets for its products, including its retail wagering services and Sky Racing services. My view is that joining Tabcorp's ownership of Sky Racing with its retail wagering services will worsen the current situation.
21. Another reason that I hold these concerns is because of recent threats that clubs in New South Wales (**NSW**) have received. I am aware that, after ClubsNSW announced that it had entered into a corporate partnership with CrownBet to provide digital wagering facilities, some clubs in NSW received threats from Tabcorp that it

may restrict their access to Sky Racing or increase the price of Sky Racing if the clubs entered into an agreement with CrownBet.

22. If the proposed merger proceeds, I am concerned about the impact it will have on the ability of clubs to enter into agreements with other providers of wagering products, such as corporate bookmakers. Based on what I have heard has occurred in NSW, I am concerned that even if it is legal for clubs to form arrangements with wagering providers in Queensland other than the State retail wagering provider (which will be the merged entity), clubs in Queensland would have a greater risk of having Sky Racing vision cut or the price of Sky Racing being increased if they enter into an arrangement with another wagering provider. I believe that it will be very difficult for clubs to use other providers because the retail wagering facility and Sky Racing will be provided by the one company (Tabcorp).

Electronic gaming machine services in Queensland

23. In Queensland, monitoring services (which involves monitoring EGMs to ensure that they comply with legislation and to calculate tax payable to the state government) can only be provided by licensed monitoring operators (**LMOs**). In Queensland, only LMOs can provide repair and maintenance services for EGMs.
24. Gaming systems (also referred to as in-venue gaming systems) are technology systems that collect data from EGMs and produce reports that assist clubs to improve the performance of their gaming operations. They also provide other services, such as membership and loyalty card services.
25. In relation to the monitoring services available in Queensland:
- (a) Maxgaming (which is owned by Tatts) is an LMO and also has its own in-venue gaming system, which is referred to as Maxgaming or Max.
 - (b) Odyssey (which is owned by Intecq, which in turn is owned by Tabcorp) is an LMO and also has its own in-venue gaming system, which is referred to as the Metropolis Gaming System (**Metropolis**). Intecq was previously known as eBET. Metropolis was previously known as the eBET gaming system and is sometimes referred to as the eBET gaming system. Odyssey uses the Sentinel System Application Programming Interface. All clubs that use Odyssey as their LMO also use Metropolis.

26. It is general knowledge in the industry that, in Queensland, Maxgaming has about 80% market share for monitoring services and Odyssey has the other 20%.
27. There are two other businesses in Queensland that have monitoring licences, but they do not currently operate as LMOs: Utopia Gaming Services and Progressive Venue Solutions. The capital costs associated with the provision of monitoring services and repair and maintenance services are very high. For example, to become an LMO there is a licence fee and application fee of around \$396,000 as well as additional annual fees. Any new LMO would also incur staffing costs and the costs of purchasing sufficient stock for EGM repairs. It may also need to incur costs if it wants to provide an in-venue gaming system.
28. Currently, clubs have some flexibility because they have the option of using Maxgaming for their monitoring services and in-venue gaming system or Odyssey and Metropolis for their monitoring services and in-venue gaming system.
29. If Maxgaming and Odyssey both become part of the merged entity, the merged entity will be the only operator of LMO services in Queensland. If that happens, clubs will be left with, in effect, a single service provider, who will be able to increase the prices of monitoring services because it will have no competitors. I understand from my experience in the industry that legislation in Queensland prohibits LMOs from charging a basic monitoring fee that is higher than that set by the regulator under regulations for supplying basic monitoring services. However, I also understand (based on enquiries that RSLCAQ has made with the Queensland regulator) that the regulator has not set any fee for supplying basic monitoring services.
30. Only LMOs can provide repair and maintenance services for EGMs. Therefore, if Maxgaming and Odyssey both become part of the merged entity, there will be no competition for the supply of repair and maintenance services, and there will be no competition to restrain the one LMO from increasing maintenance charges.
31. Gaming services include the provision of in-venue gaming systems, as well as consultancy services to improve a club's performance and profitability from its gaming operations. In-venue gaming systems are extremely important to clubs, because they collect the data that clubs use to improve the performance of their gaming operations and they incorporate a loyalty system, which is important for clubs to retain customers.

32. Based on my experience using the Maxgaming and Metropolis systems over the last 12 to 15 years, in my view the key differences between eBET's in-venue gaming systems (Metropolis, Astute, Trace) and Maxgaming's in-venue gaming system, which provide eBET's in-venue gaming systems with a point of difference are as follows.
- (a) Clubs that use Metropolis can access historical data going back several years, whereas clubs that use the Maxgaming system can only access data for the last 13 months.
 - (b) With Maxgaming, clubs need to pay for access to additional services in the systems, whereas with Metropolis, clubs pay an amount of money and receive access to the entire system.
 - (c) Metropolis is more user-friendly and more stable.
 - (d) Metropolis has better functionality in its CARDIT system in terms of flexibility to move from machine to machine using loyalty points or cash on card.
33. In my view, Odyssey's retention and growth strategy is based upon the functionality and quality of its in-venue gaming systems (Metropolis, Astute, Trace), rather than monitoring and maintenance services as there is little product differentiation between monitoring and maintenance services.

Concerns regarding the divestment of Odyssey

Potential loss of exclusivity

34. I am aware that as part of the proposed merger the Federal Group has agreed to purchase the Odyssey business. I have not seen copies of the relevant sale agreements. I have been informed by the ACCC that as part of the sale of the Odyssey business to the Federal Group, the Federal Group will become the exclusive distributor of the eBET in-venue gaming system (which I understand to mean Metropolis) in Queensland for three years. I am informed by the ACCC that Tabcorp's initial proposal was that this exclusivity under the distribution agreement would cease to apply if the purchaser of Odyssey commenced distributing, promoting, marketing or selling any system in Queensland that is similar to the eBET gaming systems. If a similar term is part of the arrangement between Tabcorp and the Federal Group, I would have the following concerns.

35. If Odyssey loses its exclusivity in relation to the distribution of Metropolis, Maxgaming could start offering the same gaming system. As Maxgaming has 80% market share, I consider it would have the ability to offer gaming system services to customers at a cheaper price than Odyssey. This would make it easier for Maxgaming to retain its existing customers. Maxgaming would also be able to target larger clubs that are under contract with Odyssey, for example, by offering to pay out their contract with Odyssey and sign up with Maxgaming. I am concerned that this could make it difficult for Odyssey to grow and ultimately result in its business no longer being sustainable. This could ultimately leave clubs with only one provider of LMO services, being Maxgaming.
36. If Maxgaming starts supplying eBET's gaming systems while the Federal Group is supplying the same or very similar systems, most clubs will end up using a similar gaming system to each other. If that happens, Odyssey will have no point of difference and, in my view, will not be able to compete with Maxgaming on price. If clubs want to offer different third party gaming systems to their customers so they can differentiate themselves from other clubs, they will need to:
- (a) remove and replace all back-office software systems;
 - (b) remove and replace all front of house systems, including EGMs' player tracking units and point of sale system interfaces; and
 - (c) replace or migrate the club's membership system (which is linked to the gaming system). This is a difficult task and will require the re-issuing or re-encryption of the membership card of each club member. In the case of Greenbank RSL, this would need to be done for about 85,000 club members.
37. The three steps outlined above would involve substantial capital outlay for clubs. I estimate that it would cost about \$2,000 to remove and replace the existing hardware on each EGM to facilitate compatibility with a new in-venue system. In a club with 300 EGMs, such as Greenbank RSL, the total capital outlay would be approximately \$600,000. This changeover process would take about four to five months. During that period, club members may not have full access to the benefits provided by their membership cards (e.g. using cash on the card at point of sale machines throughout the club). This would be an inconvenience to members and could result in clubs losing members.

38. The costs of changing to a new system and the risk of clubs losing members during the changeover process could have a substantial impact on the profitability and operations of clubs in Queensland. These costs would limit the ability of clubs to change to other third party gaming systems to differentiate themselves.

Data

39. I am concerned that Tabcorp will have access to sensitive data, as it will retain ownership of the Metropolis system and at the same time will own Maxgaming. I am aware that there are legal restrictions around the use and disclosure of information, including in the Privacy Act. I think it would be unlikely that Tabcorp would misuse the data it collects, however, it is a possibility.
40. Metropolis collects a lot of data (from the EGMs it services) about club patrons, including personal details, details of patrons' visits to a club, how much they spend at the club on gaming, wagering and other services and patrons' records of wins and losses. Metropolis also collects data about the profitability and performance of EGMs. It draws this information about patrons and EGMs from the site controller at intervals of around 15 minutes. This information is extremely valuable to clubs. If a club has this information about another club's patrons, it has sufficient information to target patrons of that other club and influence patrons of that other club to attend its own club.
41. If the merger proceeds, Tabcorp will have access to all of the data collected by Metropolis through its ownership of Intecq, including data from clubs that receive monitoring services from Odyssey. This information could be passed on to Maxgaming. By having access to such sensitive data, Tabcorp will have sufficient information so that it can target patrons and try to influence them to attend clubs where Maxgaming is the LMO rather than clubs where Odyssey is the LMO. Maxgaming or Tabcorp may have an incentive to do this for clubs that provide wide area jackpot services. These clubs pay fees/commissions to the LMOs in order to offer wide area jackpot services in their clubs. Therefore, if there are more patrons at a Maxgaming club and there is a higher play level on those products at that club, Maxgaming will get more money from people playing those products.
42. This is a particular concern for me in relation to Greenbank RSL, because Greenbank RSL is located very close to the number one gaming hotel in

Queensland, which uses Maxgaming. If the proposed merger proceeds, Tabcorp will receive monitoring information about that hotel (through Maxgaming) and data about Greenbank RSL (through eBET). If Tabcorp wanted to target Greenbank RSL's best players and influence them to attend another club, it would have access to sufficient data to enable it to do that, which it could do through promotional offers.

43. Tabcorp could also use the data to assist the clubs that have a contract with Maxgaming. For example, it could advise those clubs which EGMs are performing well at a nearby club that has a contract with Odyssey. This could assist the club that has a contract with Maxgaming to improve its performance and profitability.

Tabcorp's claims about improved product and service offerings

44. I understand that Tabcorp claims that, if the merger proceeds, there will be improved product and service offerings and that customers in the Tatts retail jurisdictions will be supplied a broader range of products and services.
45. In my experience, both Tabcorp and Tatts have spoken about investing in innovation and development over many years, and have had multiple opportunities to do so, but have not done so, or if they have, the benefits have not been passed on to clubs or consumers.
46. For example, Tabcorp recently merged its Keno operations in Queensland and NSW to provide a larger jackpot to consumers. Before the merging of the Keno operations, Tabcorp advised clubs that it expected that the merged pool would lead to more punters playing Keno, because of the increased size of the jackpots, and that operational efficiencies would be achieved and passed onto club operators. Since the merging of the Queensland and NSW Keno pools, I have not observed any meaningful financial benefits from increases in trade being passed onto clubs, including Greenbank RSL.
47. I am therefore sceptical as to Tabcorp's claims as to potential innovation in the future, and as to the claims that any operational efficiencies achieved by the proposed transaction may be passed on to clubs. I expect that if Tabcorp develops its wagering products it will be done to generate better profits for Tabcorp, not end users.

Dated: 27 April 2017

Signed:

Timothy James Wright