

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: Tony Donald Costain
Address: 166 Fryar Road, Eagleby QLD 4207
Occupation: Queensland General Manager of Hotel Clubs & Services Pty Ltd
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, **Tony Donald Costain**, of 166 Fryar Road, Eagleby QLD 4207, General Manager, say as follows:

1. I am the Queensland General Manager of Hotel & Clubs Services Pty Ltd (**HCS**), a privately owned company that provides management services to hotels and licensed venues, and I have held this role for two years, since early 2015. I have worked in the hospitality and gaming industry for 25 years, in both Queensland and New South Wales.
2. I am authorised to make this statement on behalf of HCS.
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 Tabcorp and Tatts Group Limited (**Tatts**).

Hotels & Clubs Services Pty Ltd

4. HCS started operating about 20 years ago in South Australia and expanded into Queensland in 2001. HCS provides management services to licensed venues, such as hotels and clubs. HCS is typically appointed by licensed venues when they are in financial distress and facing closure. HCS takes over the day to day management of the venue (but the Board retains control) and turns the venues around to make them profitable again. HCS generally takes over the management of the venues for an initial four to five year period, which HCS may extend (subject to meeting key performance indicators). At the end of the management period, the club or hotel will often retain HCS to continue to manage the venue.
5. In South Australia, HCS currently manages 17 venues. In Queensland, HCS currently manages six clubs and one hotel. They are CSi Club Southport, Gaythorne RSL, Goodna Services Inc, Lions at Springwood, Eagle Tavern, CSi Club Services Ipswich and Club Burleigh.
6. The services that HCS provides to its venues include providing strategic planning advice, managing relationships with suppliers, negotiating with suppliers, managing gaming facilities, advising on gaming room design, providing debt management and cash flow management services, providing bookkeeping services, providing advice in relation to renovations, managing the renovation process, advising on marketing and branding and advising on membership and loyalty programs.

7. In providing management services to venues, HCS manages the relationships between its venues and their suppliers, including negotiating with those suppliers in relation to the terms of agreements and prices of products and services. As the Queensland General Manager, I am involved in negotiating deals on behalf of HCS's venues with breweries, gaming companies and other suppliers of products and services. Because HCS manages numerous licensed venues, we have in-depth knowledge of prices available in the market for products and services, which means that we are well placed to negotiate favourable terms on behalf of our venues for certain products and services (but not wagering facilities or Sky channels, as explained below).

HCS's venues in Queensland

8. Throughout this witness statement, where I refer to HCS's venues, I am referring to its venues in Queensland, unless otherwise stated.
9. All of HCS's venues have wagering facilities, Keno and gaming machines. HCS's smallest venue has 109 gaming machines and the largest has 265. HCS's venues also have food and beverage facilities, plus entertainment facilities.

Wagering facilities at HCS's venues

10. In relation to wagering facilities, all of our venues have standalone TAB facilities. In Queensland, the TAB facility is provided by Tatts. I regularly meet with the Tatts representatives for HCS's venues.
11. In each of HCS's venue, revenue earned from the TAB facility has been in a gradual decline for several years and there has been a year on year reduction in TAB wagering turnover (and therefore commission earned on wagering turnover). The reason for this is the increasing popularity of online wagering provided by online wagering companies, especially amongst the "under 40s" market. The "under 40s" market attend our venues to socialise and watch racing vision, but they use online apps (such as bet365, Ladbrokes, Sportsbet) to place bets instead of using the standalone TAB facility at the venue.
12. The TAB facility as a whole is a loss leader for all of HCS's venues. They continue to offer it as a way of increasing revenue earned from bar sales. Our venues also offer the TAB facility in order to remain competitive. For example, if you don't have the

TAB facility, you might lose a group of customers because one person in the group wants to use the TAB.

13. At HCS, we have been very conscious of how our venues can continue to justify the cost of the TAB facility, given that the facility runs at a direct loss at each venue. Currently, three out of our seven Queensland venues are on the knife's edge as to whether they can continue to offer the TAB facility. Each venue earns commission revenue on the TAB facility of approximately [HIGHLY Confidential to Tatts] [REDACTED] of turnover (sometimes slightly above or below [HIGHLY Confidential to Tatts] [REDACTED] depending on the level of wagering turnover). Tatts sets the commission and in my experience there is no ability for the venues to negotiate on the level of commission. The commission is very small, especially compared to commission earned on Keno and returns from gaming machines. Further, if weekly wagering turnover exceeds a certain level (normally about [HIGHLY Confidential to Tatts] [REDACTED], the commission rates decline substantially.
14. Currently, if customers in our venues place bets through their Tatts online account (either through the website or app), our venues do not receive commission on those bets. Tatts has said that it proposes to look at ways it may be able to pay commission on digital wagering in the future. This has been a regular discussion point with senior regional Tatts representatives as a way we may be able to offset the decline in retail wagering, at least to some extent. Tatts has not made any commitments yet in terms of timing, but I believe this will be required in the future in order to support the retail wagering facilities.
15. In order to calculate the loss a venue makes on the TAB facility, you need to deduct the costs associated with the TAB facility, including:
 - (a) Service fees for the machinery provided by Tatts. For example, equipment rental which costs between [HIGHLY Confidential to Tatts] [REDACTED]
[REDACTED]
[REDACTED].
 - (b) Costs of tickets and stationery and other TAB products to assist in enhancing the punter experiences (such as Giddy Up and Best Bet

services which cost [HIGHLY Confidential to Tatts] [REDACTED]

[REDACTED].

- (c) Wages of dedicated wagering staff, which are high because these staff need specialised training. On the days that wagering demand is expected to be higher (e.g. Saturdays), venues need to roster on additional staff for the TAB facility. For example, on Saturdays, most of HCS's venues incur at least an extra \$200 in wages for the dedicated TAB staff.
- (d) The cost of racing vision through the Sky channels, which is significant. The cost of Sky channels is a necessary cost associated with providing wagering facilities, because racing vision is an essential component of a wagering service for the reasons explained in paragraph 18 below. All (or nearly all) of HCS's venues show both Sky Racing 1 and Sky Racing 2. On average, each of HCS's venues pays about [HIGHLY Confidential to Tabcorp] [REDACTED] per quarter for the Sky channels. This is discussed in more detail below.

Dealings with Tatts

- 16. Our dealings with Tatts in relation to the TAB facility are very one sided. The recent decline in retail wagering turnover has led to Tatts representatives offering décor enhancements to some venues as a way to improve the appeal of the TAB facility. But for many years prior to this, Tatts provided little support to venues and left them to use their own resources to market the TAB facility to customers. Tatts is in the fortunate position of being the only provider of retail wagering facilities in Queensland, which has meant that it has not needed to (and still does not) provide good quality service to venues that have TAB facilities. HCS's venues cannot get the TAB facility elsewhere and Tatts knows that.
- 17. HCS's venues have no real ability to negotiate with Tatts in relation to the terms for the TAB facility. For example, Tatts dictates when and how the TAB facility should be operated. Until recently, Tatts required the TAB facility to stay open until 9 or 10 pm every day, otherwise there was a risk of losing it. It is only recently that this changed, because Tatts realised that venues were having difficulty continuing to justify the viability of the TAB facility because of diminishing patronage. At the

moment, a venue can make a request of Tatts that its TAB facility only stay open until the final thoroughbred race of the day has finished.

Dealings with Sky Channel regarding Sky

18. Our dealings with Sky Channel Pty Ltd (**Sky Channel**) (which is part of Tabcorp) in relation to Sky are also very one sided and there is no real ability to negotiate on terms or on price, unlike with other service and product providers. Sky Channel sets the terms and the price – you either accept their terms or you don't get the service. Venues need to have Sky if they want to have a wagering facility, because racing vision is an essential component to wagering and all venues believe that they are required to have Sky showing on screens throughout the dedicated TAB area. Venues need to have a wagering facility in order to be competitive and attractive to customers.
19. The price for Sky varies from venue to venue and is calculated according to a formula published by Tabcorp. The formula contains a variable component and a fixed component. The variable component is based on TAB wagering turnover (0.625% of TAB wagering turnover). The fixed component is based upon the set fees for Sky 1 and Sky 2. There is no ability to negotiate on these prices.
20. Sky Channel can **[HIGHLY Confidential to Tabcorp]** [REDACTED]
[REDACTED]
[REDACTED]. HCS's venues have contracts that go for one to three years. Venues generally do not have any control or influence over this or any negotiating power. On at least two occasions in the past decade or so, Sky Channel has looked to increase the price of Sky significantly. When Sky Channel did this, the clubs in Queensland united, with assistance from Clubs Australia, and successfully opposed those increases. Although Sky Channel did not pursue the price increases on those occasions, these potential price increases remain a lingering concern for HCS's venues.

Concerns in relation to wagering facilities and Sky

21. HCS has not received offers from any competitor wagering providers about digital wagering or advertising partnerships. If I do receive offers from competitor wagering providers in the future (whether or not the merger proceeds), I will explore these and will take them up if they are more competitive than the TAB facility.

22. One of the concerns I have, which is shared by HCS's venues, is that if any of our venues decide to remove the TAB facility, there is a question about whether Sky Channel will increase its prices. The reason I have this concern is that at the moment, a portion of the fee that venues pay to Sky Channel is based on their wagering turnover. If a venue removes its TAB facility, Sky Channel will not be able to recover that fee, and may seek to increase its other fees to recover that loss.
23. At the moment, Sky and TAB operate independently however if the merger proceeds they will be "one and the same". If they are owned by the same company, Sky Channel will have even more influence over a venue's decision about whether or not to keep its TAB facility. If a venue decides that it wants to remove its TAB facility, for example to save some costs, and just allow people to bet on apps, Sky Channel may decide to stop supplying its service altogether or to increase its prices significantly. Although a venue may be able to survive in the future without TAB retail wagering facilities (because punters would be able to use electronic betting websites and apps), the risk of losing Sky is a huge risk for clubs, because it would reduce attendance at venues.
24. As stated above, Sky Channel can **[HIGHLY Confidential to Tabcorp]** [REDACTED], or can set a new price (which is a significant increase on the previous price) when the Sky contract is up for renewal. In the past, Sky Channel has attempted to increase the price of Sky significantly, and these attempts have only been overcome by clubs in Queensland uniting and pushing back on significant price increases, with the help of Clubs Australia.
25. My experience in dealing with Tatts (for TAB wagering facilities) and Sky Channel (which is part of Tabcorp) is that they both act in a dictatorial manner. They dictate the terms and the prices. If you don't like it, then you don't get the facilities. If they become part of the same company (i.e. the merged entity), I am concerned that this behaviour will get worse, and any chance that venues have had in the past of resisting price increases with the help of their representative body (as explained above) will diminish. Based on my experience in the industry, I believe that if the merger proceeds, it may be more difficult for clubs (and their industry association) to push back on significant price increases, because the merged entity will have control over all retail wagering facilities and racing vision in licensed venues.

Gaming facilities and services at HCS's venues

26. In relation to gaming, currently five out of seven of HCS's venues in Queensland are with Odyssey (which is owned Tabcorp) and the other two are with Maxgaming (which is owned by Tatts). Part of HCS's role is to negotiate a group deal, which we have done with five out of seven venues.
27. We have more negotiating power in our dealings with Odyssey than with Maxgaming, because Odyssey is a smaller market player. Maxgaming has the majority of market share, so there is little ability to negotiate on fees. It has set fee structures and is not willing to reduce its fees. On the other hand, Odyssey is a smaller market player and HCS, as the manager of a number of clubs, is a big client, so we have been able to achieve a significant saving by using Odyssey. In my experience, Odyssey is about half the price of Maxgaming for gaming services.

Concerns about gaming services and the divestment of Odyssey if the merger proceeds

28. I have been informed by the ACCC that if the merger proceeds, Tabcorp proposes to sell Odyssey to the Federal Group, and that as part of the sale Odyssey will become the exclusive distributor of eBET in-venue gaming systems in Queensland for three years, and the Federal Group will be provided with a copy of the object code and source code for the principal eBET gaming system product (Metropolis) as well as other ancillary products (Breakaway and Card IT), and it will have a perpetual licence in Queensland to use that code including a right to modify and adapt the code. I have been informed that the intention is that if Federal Group chooses to introduce an in-venue system into Queensland which replaces or competes with Metropolis, the Federal Group would no longer be the exclusive distributor of eBET systems.
29. I have not seen the relevant sale agreements. I would be concerned if the Federal Group lost its exclusivity to use the eBET in-venue gaming systems because a venue decided it wanted to acquire a competing service from a third party, such as IGT or Konami, and Odyssey connected its monitoring system to that third party's in-venue gaming system.
30. At the moment, Odyssey's point of difference is that it can supply Astute and Metropolis. If Odyssey were to lose its exclusivity to supply these products, and Maxgaming was also able to supply them, I do not know how competitive Odyssey

would be. A lot of Odyssey customers have contracts, but a number of them, including some of HCS's venues, have contracts that are out of date or need to be renewed. Due to its size, Maxgaming could come to customers, particularly bigger venues, and offer them more competitive prices for monitoring and maintenance products to try to entice customers to move from Odyssey to Maxgaming. If Maxgaming offered lower prices for its monitoring and maintenance products, and also offered eBet's gaming systems, there would be no real benefit for customers to stay with Odyssey. This would affect Odyssey's ability to compete in the monitoring and maintenance field.

Public benefits claimed by Tabcorp

31. I understand that Tabcorp says that one benefit of the merger is that the Tatts states (which have not had the benefit of investment into retail wagering facilities) will benefit because there will be more investment into the facilities in those states.

32. There have been very limited changes in the TAB facility and the associated technology in the last 15 to 20 years. Based on my experience to date, I am extremely sceptical that, as the only provider of retail wagering services and racing vision, the merged entity will see any need to spend significant money on to improve its technology and systems to remain competitive.

Dated: 27 April 2017

Signed: 

Tony Donald Costain