

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: 16 May 2017

WHERE MADE: Melbourne



THE TRIBUNAL DIRECTS THAT:

1. This order is made by the Australian Competition Tribunal for the purposes of section 106(2) of the *Competition and Consumer Act 2010* (Cth).

Definitions used in these directions

2. The following defined terms apply for the purposes of these Orders:
 - (a) **Act** means *Competition and Consumer Act 2010* (Cth).
 - (b) **Commission** means the Australian Competition and Consumer Commission.
 - (c) **Confidentiality Claimant** means, in respect of particular Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
 - (d) **Confidential Information** means all information filed with the Tribunal in the Proceeding in respect of which a claim of confidentiality has been made and which has not been refused by the Tribunal and which has been marked 'Extra-Highly Confidential'.
 - (e) **CrownBet** means CrownBet Pty Ltd.

- (f) **Intervener** means a person or entity which:
- i. has made an application for leave to intervene in the Proceeding which has not been refused by the Tribunal; or
 - ii. is permitted by the Tribunal pursuant to section 109(2) of the Act to intervene in the Proceeding.
- (g) **Orders** means these orders dated 16 May 2017.
- (h) **Proceeding** means ACT 1 of 2017 (including any appeals from a decision of the Tribunal in the Proceeding).
- (i) **Racing.com** means Racing.com Pty Ltd.
- (j) **Support Staff** means persons providing administrative assistance and includes secretaries, administrative assistants, graduates, IT staff, print room staff and staff of external printing vendors.
- (k) **Tabcorp** means Tabcorp Holdings Limited.
- (l) **Tatts** means Tatts Group Limited.
- (m) **Tribunal** means Australian Competition Tribunal.
- (n) **Victorian Racing Interveners** means Racing Victoria Limited, Harness Racing Victoria and Greyhound Racing Victoria.



Access to Confidential Information

3. These Orders are made further to the orders of the Tribunal dated 23 March 2017.
4. The following persons have unrestricted access to the Confidential Information marked 'Extra-Highly Confidential', provided such persons keep that material confidential in accordance with these Orders:
 - (a) the Tribunal, Tribunal staff and any other person assisting the Tribunal;
 - (b) the Commission, Commission staff and any other person assisting the Commission in relation to the Proceeding including the Commission's external barristers and solicitors;
 - (c) external consultants and independent experts engaged for the purpose of the Proceeding by the Commission (or the Commission's external solicitors), provided that the Commission's external solicitors have notified the relevant Confidentiality Claimant of the names of such persons;
 - (d) external barristers retained by Tabcorp or by Tatts or by any Intervener for the purpose of the Proceeding who have already been provided with that material; and
 - (e) Support Staff of the persons listed in 4(a)-(d) of these Orders.

5. The following persons have unrestricted access to the Confidential Information marked 'Extra-Highly confidential', provided that such persons have signed a confidentiality undertaking in the form attached and marked "Confidentiality Undertaking A" or "Confidentiality Undertaking B" (noting that Confidentiality Undertaking A is to be signed by legal practitioners acting for Tabcorp or Tatts, and Confidentiality Undertaking B is to be signed by legal practitioners acting for CrownBet, the Victorian Racing Interveners and Racing.com):

(a) external solicitors retained by Tabcorp or by Tatts or by any Intervener for the purpose of the Proceeding, listed below:



- i. Grant Majoribanks and Merryn Quayle of Herbert Smith Freehills for Tabcorp;
- ii. Simon Muys and Jeremy Jose of Gilbert + Tobin for Tabcorp;
- iii. Michael Corrigan and Ian Reynolds of Clayton Utz for Tatts;
- iv. Geoff Carter and Miranda Noble of MinterEllison for CrownBet Pty Ltd;
- v. Nick Taylor and Prudence Smith of Jones Day for the Victorian Racing Interveners; and
- vi. John Kench and Johanna Croser of Johnson Winter & Slattery for Racing.com;

(b) any other person, with the prior written consent of the Confidentiality Claimant.

General orders as to confidentiality

6. On 2 days' notice to the Confidentiality Claimant, the Commission, Tabcorp, Tatts, any other Intervener and any other interested person has liberty to apply for a direction seeking access to Confidential Information. The relevant Confidentiality Claimant and the Commission will be provided with an opportunity to be heard before the Confidential Information is disclosed to any person other than as permitted by these Orders.
7. Until further order of the Tribunal, Confidential Information is not to appear in any transcript of the Proceeding before the Tribunal other than in a confidential copy of the transcript, which shall only be made available to the persons referenced in paragraph 3 and 4 of these Orders and otherwise, as permitted by these Orders.
8. Tabcorp, the Commission, any Intervener and any interested person have general liberty to apply for further directions.

Date entered: 16 May 2017



[Handwritten signature]

REGISTRAR
Australian Competition Tribunal

Confidentiality Undertaking A

No. ACT 1 of 2017

Australian Competition Tribunal

Re: Application by Tabcorp Holdings Limited under section 95AU of the Competition and Consumer Act (Cth)

I, [name], [occupation], of [address], on [date] hereby undertake to the Tribunal and to each Confidentiality Claimant (but in relation to that Confidentiality Claimant's Confidential Information only) as follows:

1. In this undertaking:
 - (a) **Commission** means the Australian Competition and Consumer Commission.
 - (b) **Confidential Information** means all information filed with the Tribunal in the Proceeding in respect of which a claim of confidentiality has been made and which has been made and not refused by the Tribunal and which has been marked 'Extra-Highly Confidential'.
 - (c) **Confidentiality Claimant** means, in respect of particular Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
 - (d) **Confidentiality Directions** means the directions of the Tribunal in the Proceeding dated 16 May 2017, a copy of which marked "Annexure A" is annexed to this undertaking.
 - (e) **CrownBet** means CrownBet Pty Ltd.
 - (f) **Proceeding** means ACT 1 of 2017 (including any appeals from a decision of the Tribunal in the Proceeding).
 - (g) **Racing.com** means Racing.com Pty Ltd.
 - (h) **Tabcorp** means Tabcorp Holdings Limited.

- (i) **Tatts** means Tatts Group Limited.
 - (j) **Tribunal** means Australian Competition Tribunal.
 - (k) **Victorian Racing Interveners** means Racing Victoria Limited, Harness Racing Victoria and Greyhound Racing Victoria.
2. I will not use the Confidential Information for any purpose other than my work in respect of the Proceeding.
 3. In the event that I receive instructions to act for Tabcorp or Tatts in relation to any matter relating to or connected in any way with any of CrownBet Pty Ltd, the Victoria Racing Interveners or Racing.com, I will (within 3 days of receiving those instructions) notify the solicitors acting for that party. This obligation continues for 5 years from the date of final determination of the Proceeding.
 4. I will keep the Confidential Information confidential and will not disclose the Confidential Information directly or indirectly to any person, other than the persons permitted to access such information pursuant to the directions 3 and 4 of the Confidentiality Directions or pursuant to any other directions of the Tribunal in the Proceeding related to confidentiality.
 5. To the extent that I have Confidential Information, I will:
 - (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
 - (b) keep the Confidential Information under my effective control; and
 - (c) immediately notify the Confidentiality Claimant in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information, of which I become aware and provide any reasonable assistance requested by the Confidentiality Claimant in relation to any action that the Confidentiality Claimant may take against any person for such unauthorised use or disclosure.
 6. Following the final determination of the Proceeding, I will do one of the following:
 - (a) continue to maintain the Confidential Information under my effective control and safeguard it from unauthorised access or use; or
 - (b) destroy the Confidential Information in my possession, custody or control; or

- (c) return or cause to be returned the Confidential Information in my possession, custody or control, to the Confidentiality Claimant (or its solicitors).
7. I may only vary the terms of this undertaking with the prior written consent of the Confidentiality Claimant (or its solicitors) or by order of the Tribunal.
 8. I acknowledge that my obligations in paragraphs 2, 3, 4, 5, 6, 7, 9 and 10 of this undertaking will continue after the final determination of the Proceeding and the destruction or return of the Confidential Information to the Confidentiality Claimant (or its solicitors).
 9. I acknowledge that damages are not an adequate remedy for the breach of my obligations in this undertaking and that the Confidentiality Claimant shall be entitled to equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.
 10. I irrevocably submit to the jurisdiction of the Tribunal for the purposes of enforcing the terms of this undertaking, which are governed by the laws of the State of Victoria.

SIGNED by **[name]** in the presence of: _____

Signature of **[name]**

Signature of witness, whose name and address appears below.

Confidentiality Undertaking B

No. ACT 1 of 2017

Australian Competition Tribunal

Re: Application by Tabcorp Holdings Limited under section 95AU of the Competition and Consumer Act (Cth)

I, **[insert]**, of **[insert]**, on **[insert]** hereby undertake to the Tribunal and to each Confidentiality Claimant (but in relation to that Confidentiality Claimant's Confidential Information only) as follows:

1. In this undertaking:
 - (a) **Commission** means the Australian Competition and Consumer Commission.
 - (b) **Confidential Information** means all information filed with the Tribunal in the Proceeding in respect of which a claim of confidentiality has been made and which has been made and not refused by the Tribunal and which has been marked 'Extra-Highly Confidential'.
 - (c) **Confidentiality Claimant** means, in respect of particular Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
 - (d) **Confidentiality Directions** means the directions of the Tribunal in the Proceeding dated 16 May 2017, a copy of which marked "Annexure A" is annexed to this undertaking.
 - (e) **CrownBet** means CrownBet Pty Ltd.
 - (f) **Proceeding** means ACT 1 of 2017 (including any appeals from a decision of the Tribunal in the Proceeding).
 - (g) **Racing.com** means Racing.com Pty Ltd.
 - (h) **Tabcorp** means Tabcorp Holdings Limited.

- (i) **Tatts** means Tatts Group Limited.
 - (j) **Tribunal** means Australian Competition Tribunal.
 - (k) **Victorian Racing Interveners** means Racing Victoria Limited, Harness Racing Victoria and Greyhound Racing Victoria.
2. I will not use the Confidential Information for any purpose other than my work in respect of the Proceeding.
3. **[NOT USED]**.
4. I will keep the Confidential Information confidential and will not disclose the Confidential Information directly or indirectly to any person, other than the persons permitted to access such information pursuant to the directions 3 and 4 of the Confidentiality Directions or pursuant to any other directions of the Tribunal in the Proceeding related to confidentiality.
5. To the extent that I have Confidential Information, I will:
- (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
 - (b) keep the Confidential Information under my effective control; and
 - (c) immediately notify the Confidentiality Claimant in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information, of which I become aware and provide any reasonable assistance requested by the Confidentiality Claimant in relation to any action that the Confidentiality Claimant may take against any person for such unauthorised use or disclosure.
6. Following the final determination of the Proceeding, I will do one of the following:
- (a) continue to maintain the Confidential Information under my effective control and safeguard it from unauthorised access or use; or
 - (b) destroy the Confidential Information in my possession, custody or control; or
 - (c) return or cause to be returned the Confidential Information in my possession, custody or control, to the Confidentiality Claimant (or its solicitors).

7. I may only vary the terms of this undertaking with the prior written consent of the Confidentiality Claimant (or its solicitors) or by order of the Tribunal.
8. I acknowledge that my obligations in paragraphs 2, 3, 4, 5, 6, 7, 9 and 10 of this undertaking will continue after the final determination of the Proceeding and the destruction or return of the Confidential Information to the Confidentiality Claimant (or its solicitors).
9. I acknowledge that damages are not an adequate remedy for the breach of my obligations in this undertaking and that the Confidentiality Claimant shall be entitled to equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.
10. I irrevocably submit to the jurisdiction of the Tribunal for the purposes of enforcing the terms of this undertaking, which are governed by the laws of the State of Victoria.

SIGNED by **[name]** in the presence of: _____

Signature of **[name]**

Signature of witness, whose name and address appears below.