

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT

of 2017

Re: Proposed acquisition of Tatts Group Limited by Tabcorp Holdings Limited

Tatts Group Limited (Intervener)



Statement of: **Susan Lynn van der Merwe**

Address: 87 Ipswich Road, Woolloongabba, Queensland

Occupation: Chief Operating Officer - Lotteries

Date: 8 March 2017

This document contains confidential information which is indicated as follows:

[HIGHLY Confidential to Tatts] [.....]

[Confidential to Tatts] [.....]

Filed on behalf of: Tatts Group Limited (Intervener)
Prepared by: Michael Corrigan and Roxana Carrion
Law firm: Clayton Utz, Lawyers

Address for service:
Level 15
1 Bligh Street
Sydney NSW 2000
DX 370 Sydney

Contact details:
Tel: +61 2 9353 4000
Fax: +61 2 8220 6700
Contact: Michael Corrigan
Email: mcorrigan@claytonutz.com
Ref: 187/14594/80165551

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On 8 March 2017, I, Susan Lynn van der Merwe, Chief Operating Officer (Australia) of 87 Ipswich Road, WOOLLOONGABBA Queensland state:

1. I am the Chief Operating Officer - Lotteries (**COO - Lotteries**) of Tatts Group Limited (**Tatts**).
2. I am authorised to make this statement on behalf of Tatts.
3. This statement is made in support of an application by Tabcorp Holdings Limited (**Tabcorp**) to the Australian Competition Tribunal (**Tribunal**) for authorisation of the merger of Tatts and Tabcorp (**Merger**).
4. I make this statement from my own knowledge except where otherwise stated. Where I have relied on information, I have set out the sources of my information and believe the information to be true and correct.
5. This statement is arranged by reference to the following subject matters:
 - (a) my background, qualifications and experience;
 - (b) an overview of lottery products;
 - (c) an overview of Keno products;
 - (d) an overview of Tatts' lotteries and Keno business, including:
 - (i) details of Tatts' lotteries licensing regimes (such as the duration of those regimes and the extent to which they offer exclusivity), and Tatts' lottery product offerings;
 - (ii) the identity of Tatts' competitors in the lotteries industry and the general consumer market;
 - (iii) a comparison of Tatts' lotteries products with other games including Keno;
 - (iv) the competitive constraints and challenges faced by the Tatts' lotteries business;
 - (v) an overview of how Tatts acquired each of its lotteries licences;
 - (vi) an overview of Keno licences in Australia;
 - (vii) an overview of Tatts' Keno offering, including details of Tatts' Keno licensing regimes in South Australia and Victoria, (including the duration of those regimes and the extent to which they offer exclusivity) and Tatts' Keno product offering in South Australia;
 - (viii) the identity of Tatts' competitors in the Keno industry;
 - (ix) details of how Tatts acquired its Keno related licences in South Australia and Victoria (to the extent that I was involved); and
 - (x) Tatts' policies to address responsible participation in lotteries.
6. Exhibited to me at the time of making this statement and marked "**Exhibit SM-1**" is a bundle of documents. Exhibited to me at the time of making this statement is a further bundle of documents marked "**Confidential Exhibit SM-2**". Exhibited to me at the time of making this statement is a further bundle of documents marked "**Highly Confidential Exhibit SM-3**". Where in this statement I refer to documents, I refer to them by reference to their unique document number beginning with a "TAT" prefix. I have reviewed those documents prior to signing this statement. Tatts claims confidentiality over Confidential Exhibit SM-2 and Highly Confidential Exhibit SM-3.

7. Except as stated otherwise, Exhibit SM-1, Confidential Exhibit SM-2 and Highly Confidential Exhibit SM-3 contain business records of Tatts, either prepared in the course of conducting its business, or received by it in the course of that business.
8. Information recorded in a number of paragraphs of this statement is confidential to Tatts, as it concerns its business plans and analysis. Those paragraphs are 23, 25, 50, 51, 52, 53, 54, 68, 69, 71(c), 71(d), 77, 80, 104, 117, 118, 128, 130.
9. The documents in Confidential Exhibit SM-2 and Highly Confidential Exhibit SM-3 are not to be disclosed to persons, or parties, outside Tatts' business, except on a confidential basis.

A. MY BACKGROUND, QUALIFICATIONS AND EXPERIENCE

10. I am the COO - Lotteries of Tatts and have held this position since 21 July 2014.
11. I have over 26 years' experience in the lottery industry. I commenced my career in marketing lotto games in 1990 and progressed through various management roles to my current role, where I am responsible for leading the core lotteries team at Tatts. I worked for Golden Casket Lottery Corporation Ltd (**Golden Casket**) since 1990, most recently as General Manager Lotteries, prior to Tatts acquiring Golden Casket in 2007.
12. A copy of my most recent curriculum vitae is at **Tab 1 of Exhibit SM-1 [TAT.001.013.2226]**.
13. Since I joined Golden Casket in 1990, I have acquired detailed knowledge and expertise in relation to all aspects of the lotteries and Keno business which Tatts now conducts, including knowledge of:
 - (a) the sale, marketing and design of lottery and Keno products that appeal to Australians;
 - (b) the reasons why consumers purchase lottery and Keno products and other games of chance;
 - (c) the identity of Tatts' competitors in the lotteries and Keno industry;
 - (d) the nature and extent of competition between Tatts and its competitors in the lotteries and Keno industry; and
 - (e) the lotteries and Keno licences held by Tatts.

B. AN OVERVIEW OF LOTTERY PRODUCTS

14. Lotteries are a chance-based activity where a player attempts to pick the winning numbers that will be randomly drawn from a larger set of numbers or match a combination of symbols to win a prize.
15. There are three categories of lottery games:
 - (a) *numbers games* (Lotto, Set for Life, Pools) where a player attempts to pick the winning numbers that will be randomly drawn from a larger set of numbers (or in the case of Pools, determined by the outcome of soccer games). Players can choose to pick their own numbers or have their numbers randomly selected through the lottery terminal (known as a Quick Pick entry type). The prize pool is split into divisions with division 1 offering the highest prize pool. The total prize pool is a percentage of ticket sales and both this and the amount allocated to each division are set out in the respective game rules or other legislation. If multiple players win in the same division, the prize pool for that division will generally be split between those winners (with some exceptions where the prize is a fixed amount per winner up to a capped number of winners after which the prize pool is shared). The amount won is determined by the winning combination of numbers matched against the drawn numbers and according to the divisional prize structure set out in the respective game rules or other legislation. There is a time gap between when

- players purchase tickets and when the draw determining the winning outcome occurs. The time gap between draws is generally a week, or in the case of Tatts' Set for Life game, a day;
- (b) *instant lottery products* where players scratch and reveal symbols for a chance to win a predetermined prize. The prize pool is determined by set percentages of the total value of the tickets printed for each game (ticket series), while the number and value of prizes varies per game. The winning outcome is determined when the player chooses to scratch the ticket which may take place instore immediately on purchase or at their leisure; and
 - (c) *draw lottery products* where a set number of tickets are available for purchase and the draw occurs when they are all sold. Each ticket has a unique number; there are multiple prize levels and the prizes at each level are predetermined.
16. Keno is a different type of product, having both lottery and betting attributes which I discuss below.
17. In Australia, lottery products are distributed through retail channels such as newsagencies and convenience stores. Tatts, which operates in New South Wales, Queensland, Victoria, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory has approximately 4,000 retail outlets. Lotterywest, which operates in Western Australia, had approximately 529 retail outlets in Western Australia in FY16. A copy of Lotterywest's 2016 Annual Report is at **Tab 2 of Exhibit SM-1 [TAT.001.013.2983]**. Lottery products (with the exception of instant lottery products) are also generally available online.

C. AN OVERVIEW OF KENO PRODUCTS

18. In Keno, a player attempts to pick the winning numbers that will be randomly drawn from a larger set of numbers. Players can choose to pick their own numbers or have their numbers randomly selected through the gaming terminal. The prize pool is split into prize levels. The respective game rules set out the total prize pool, which is a percentage of ticket sales, and the prize payable to a winner at each prize level. The amount won is determined by the winning combination of numbers matched against the drawn numbers and according to the divisional prize structure set out in the respective game rules. The prize per level is fixed up to a certain level with higher prize (or spot) levels offering both fixed and jackpot elements with lower chances of winning.
19. The elements of Keno numbers games which are more akin to a betting product are the lower spot levels, with lower prizes and higher chances of winning, and the ability for players to choose the level of risk and return by the quantity of the numbers selected and the amount played on each game. There is also only a very short a time gap (generally minutes) between draws occurring and when players purchase tickets for each draw.
20. The elements of Keno numbers games which are more akin to a lottery product are the higher spot levels, with higher prizes and lower chances of winning. I discuss this further below. However, the frequency with which Keno is played by a consumer and when prizes are awarded under Keno games differs markedly from lottery products. In my experience those differences are seen as important by consumers.

D. TATTS' LOTTERIES AND KENO BUSINESS

21. Tatts is an ASX listed company that is a global leader in the wagering, lotteries and gaming industries.
22. Since the cessation of its Victorian gaming business in August 2012, Tatts' largest business unit has been its lotteries operations. Tatts is the leading Australian lotteries operator and the only non-government owned lotteries licence holder in Australia. According to the 2016 Annual Report for Tatts, for the year ended 30 June 2016, Tatts' lotteries portfolio generated AUD\$2,139 million in revenue. A copy of that report is at **Tab 3 of Exhibit SM-1 [TAT.001.014.0638]**.

23. [HIGHLY Confidential to Tatts] Tatts is currently the exclusive or sole public lottery licence holder in all Australian States and Territories except Western Australia and has over 2 million registered online players with its lotteries business. Tatts' lotteries business is primarily retail-based, with approximately 4,000 retail outlets and 86.5% of sales for the year ended 30 June 2016 derived through the Tatts' retail channel. Tatts also operates via digital channels which includes an online website and a mobile app and these accounted for 13.5% of sales for the same period. Tatts' lottery website receives on average 3 million visitors per month.
24. Based on my experience through many years of working in the lotteries industry and exposure to customer research, global lottery industry associates and feedback from lottery retailers, it is my opinion that customers do not view themselves as gambling when they are purchasing lottery products, but rather buying a chance to win a large prize for a small outlay, that is, more akin to a discretionary purchase for a fast moving consumer goods product.
25. This approach is also reflected in the language adopted by Tatts in respect of its lotteries products and its entire business strategy. For example, in internal discussions within Tatts and Tatts' marketing and other communications, a customer is said to "play" rather than "bet on" Tatts' lotteries products; brands are supported through mass consumer marketing; strategies are focused on building players' emotional engagement with the brands; and the business model is [HIGHLY Confidential to Tatts]
- For example:
- (a) Tatts' Operating Unit Reports of 30 July 2015 (**Tab 1 of Highly Confidential Exhibit SM-3 [TAT.001.002.1582]**) states:
- [HIGHLY Confidential to Tatts]
- (b) Tatts' Operating Unit Reports of 21 April 2016 (**Tab 2 of Highly Confidential Exhibit SM-3 [TAT.001.003.0885]**) notes as a planned initiative:
- [HIGHLY Confidential to Tatts]
- (c) Tatts' Operating Unit Reports of 24 June 2016 (**Tab 3 of Highly Confidential Exhibit SM-3 [TAT.001.003.1234]**) provides:
- [HIGHLY Confidential to Tatts]

26. The main products offered by Tatts' lotteries and Keno business are:
- (a) weekly lottery games, known as Saturday Lotto, Monday and Wednesday Lotto, Oz Lotto, Powerball, Super 66, Strike and The Pools and a daily game known as Set For Life;
 - (b) instant lottery products, known as 'Instant Scratch-its';
 - (c) a draw lottery product known as Lucky Lotteries; and
 - (d) Keno, sold in South Australia only.
27. The supply of Tatts' lottery and Keno products are governed by various rules made pursuant to State or Territory legislation (**Rules**). These Rules are published on Tatts' lotteries website and include:
- (a) in New South Wales: Rules made under *Public Lotteries Act 1996* (NSW) relating to Lotto, Oz Lotto, Powerball, Set for Life, Instant Lotteries and Promotional Instant Lotteries, Lucky Lotteries and Lotto Strike. By way of example, the Rules relating to Lotto can be found at [<https://thelott.com/nswlotteries/games/lotto/game-rules-and-odds>];
 - (b) in Queensland: the *Lotteries Rule 2010* (Qld) relating to Monday and Wednesday Gold Lotto, Saturday Gold Lotto, Powerball, Pools, Super 66, Oz Lotto, Instant Scratch-Its, Lucky Lotteries, promotional lotteries and Set for Life. The *Lotteries Rule 2010* (Qld) can be found at [<https://thelott.com/goldencasket/games/powerball/odds-of-winning>];
 - (c) in South Australia: the *Lotteries (Keno) Rules*, *Lotteries (General) Rules* and Rules relating to X Lotto, Oz Lotto, Powerball, Set for Life, The Pools, Super 66 and Instant Scratch-its. By way of example, the Rules relating to Powerball can be found at: [<https://thelott.com/salotteries/games/powerball/how-to-play-powerball>];
 - (d) in the Victoria and Tasmania: *Rules of Authorised Lotteries* relating to Tattslotto, Super 66, Monday and Wednesday Lotto, Oz Lotto, Powerball, The Pools, Draw Lotteries (Lucky Lotteries), Instant Scratch-Its and Set for Life. The *Rules of Authorised Lotteries* can be found at [<https://thelott.com/tattersalls/about/game-rules>]; and
 - (e) in the Northern Territory: *Rules of Authorised Lotteries* (NT) relating to Tattslotto, Super 66, Monday and Wednesday Lotto, Oz Lotto, Powerball, The Pools, Draw Lotteries (Lucky Lotteries) and Set for Life. The *Rules of Authorised Lotteries* can be found at [<https://thelott.com/tattersalls/about/game-rules>].
28. Tables identifying the following information relevant to Tatts' lotteries products were prepared by Clayton Utz, Tatts' solicitors, in conjunction with Rosann De Campo, Senior Corporate Solicitor of Tatts, for the purpose of assisting Tabcorp to answer Questions 6 ("Suppliers"), 9 ("Market Concentration") and 17 ('Prices and Profit Margins") of the Form S for its Tribunal application:
- (a) the key external inputs that enable Tatts to provide lottery products (**Tab 4 of Highly Confidential Exhibit SM-3 [TAT.001.013.2840]** and **Tab 4 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0084]**) (**Lotteries Inputs Table**);
 - (b) a selection of the suppliers who provide those inputs required for Tatts to provide lottery products (**Tab 5 of Highly Confidential Exhibit SM-3 [TAT.001.013.2843]** and **Tab 5 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0088]**) (**Lotteries Suppliers Table**);
 - (c) the supply costs incurred by Tatts in providing lottery products (**Tab 6 of Highly Confidential Exhibit SM-3 [TAT.001.013.2852]** and **Tab 6 of Exhibit SM-1** (with

confidential information redacted) [TAT.001.030.0095]) (**Lotteries Supply Costs Table**);

- (d) the turnover figures of Tatts' lottery products for each State and Territory in which Tatts operates for the period of FY12 - FY16 (**Tab 7 of Highly Confidential Exhibit SM-3 [TAT.001.013.2846]**) (**Lotteries Turnover Table**);
- (e) the turnover figures for the lotteries market generally in each State and Territory in which Tatts operates for the period of FY12 - FY16 including adjusted figures thereof (**Tab 8 of Highly Confidential Exhibit SM-3 [TAT.001.013.2847]** and **Tab 7 of Exhibit SM-1** (with confidential information redacted) [TAT.001.030.0092]) (**Lotteries Market Turnover Table**);
- (f) Tatts' market share of lotteries market by turnover for each State and Territory in which Tatts operates for the period of FY12 - FY16 (**Tab 9 of Highly Confidential Exhibit SM-3 [TAT.001.013.2848]**) (**Lotteries Market Share Table**);
- (g) the revenue figures of Tatts' lottery products and for each State and Territory in which Tatts operates for the period of FY12 - FY16 (**Tab 10 of Highly Confidential Exhibit SM-3 [TAT.001.013.2849]**) (**Lotteries Revenue Table**);
- (h) the legislated minimum percentage of the entry cost which must be distributed back to players as prizes (**Return to Player Percentage**) for each of Tatts' lottery products in each State and Territory in which Tatts operates, as well as Tatts' actual Return to Player Percentage for each product in FY16. This table is at **Tab 11 of Highly Confidential Exhibit SM-3 [TAT.001.013.2850]** and **Tab 8 of Exhibit SM-1** (with confidential information redacted) [TAT.001.030.0093] (**Lotteries Return to Player Table**);

(together, the **Lotteries Tables**). I am informed by Rosann De Campo and believe that the contents of the Lotteries Tables are accurate.

29. Tables identifying the following information relevant to Tatts' Keno products were prepared by Clayton Utz, Tatts' solicitors, in conjunction with Rosann De Campo of Tatts, for the purpose of assisting Tabcorp to answer Questions 6 ("Suppliers"), 9 ("Market Concentration") and 17(b) ("Prices and Profit Margins") of the Form S for its Tribunal application:

- (a) the key external inputs that enable Tatts to provide Keno products (**Tab 12 of Highly Confidential Exhibit SM-3 [TAT.001.013.2855]** and **Tab 9 of Exhibit SM-1** (with confidential information redacted) [TAT.001.030.0099]) (**Keno Inputs Table**);
- (b) a selection of the suppliers who provide those inputs required for Tatts to provide Keno products (**Tab 13 of Highly Confidential Exhibit SM-3 [TAT.001.013.2857]** and **Tab 10 of Exhibit SM-1** (with confidential information redacted) [TAT.001.030.0102]) (**Keno Suppliers Table**);
- (c) the supply costs incurred by Tatts in providing Keno products (**Tab 14 of Highly Confidential Exhibit SM-3 [TAT.001.013.2860]** and **Tab 11 of Exhibit SM-1** (with confidential information redacted) [TAT.001.030.0105]) (**Keno Supply Costs Table**); and
- (d) for FY12 - FY16, Tatts' market share of the South Australian Keno market by turnover (**Tab 15 of Highly Confidential Exhibit SM-3 [TAT.001.013.2982]**) (**Keno Market Share Table**);

(together, the **Keno Tables**). I am informed by Rosann De Campo and believe that the contents of the Keno Tables are accurate.

30. Tatts' lotteries business oversees the operations of both Tatts' lotteries and Keno products. In preparing the Lotteries Tables and the Keno Tables, it was necessary to apportion expenditure between Tatts' lotteries and Keno products. In some instances, inputs and supply costs were incurred in respect of both products. In those cases, Tatts has estimated its expenditure (as

between lotteries products and Keno products) by reference to the proportion of overall sales revenue of Tatts' lotteries business unit in FY16 which was attributable to Tatts' Keno products, being [HIGHLY Confidential to Tatts] (the **Estimate**). I believe this use of the Estimate to be a legitimate method in apportioning inputs and supply costs between Tatts' lotteries and Keno products.

Tatts' lotteries licensing arrangements and product offerings

31. Tatts' lotteries business in Australia is operated by various wholly owned subsidiaries being:
 - (a) New South Wales Lotteries Corporation Pty Ltd (**NSW Lotteries**);
 - (b) Tattersall's Sweeps Pty Limited (**Tattersall's Sweeps**);
 - (c) Golden Casket;
 - (d) Tatts NT Lotteries Pty Ltd (**Tatts NT**); and
 - (e) Tatts Lotteries SA Pty Ltd (**Tatts SA**);

(collectively known as **the Lott**). Tatts' subsidiaries and investments in controlled entities are set out at pages 140 to 141 of Tatts' FY16 Annual Report (at **Tab 3 of Exhibit SM-1 [TAT.001.014.0638]** at [.0708]).
32. In Australia, each State and Territory has its own licensing regime for lotteries. There are two principal licensed lottery operators in Australia, being:
 - (a) Lotterywest, an entity owned by the Western Australia government which operates in Western Australia; and
 - (b) Tatts, through its subsidiaries, in:
 - (i) New South Wales, Victoria and South Australia, through exclusive licences or agreements; and
 - (ii) Queensland, Tasmania, the Australian Capital Territory and the Northern Territory. These licences are not exclusive, but Tatts, through its subsidiaries, is presently the sole licence holder in those States and Territories.
33. There are two other companies that also sell Tatts' lottery products in Australia (one of which also sells charity lottery products), and three companies that sell Tatts' lottery products in overseas markets. I describe these companies below from paragraph 49 onwards.
34. At **Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826]** and **Tab 12.1 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0108]**, is a table which has been prepared by Clayton Utz Lawyers and which summarises the lottery licences held by Tatts in Australia, including, for each State and Territory that Tatts holds a lottery licence:
 - (a) details of the licensee;
 - (b) details of the licence(s) and permit(s) held by that licensee;
 - (c) the date that the licence(s) and permit(s) expire(s);
 - (d) the lottery products permitted by each licence(s) and permit(s); and
 - (e) the legislative exceptions to Tatts' exclusivity;

(Lotteries Licences Table).

35. Having reviewed the table, it accords with my understanding of the lottery licences held by Tatts in Australian States and Territories.
36. Tatts also holds lottery rights in the external Australian territory of Norfolk Island, as well as the Cook Islands.
37. In general terms, Tatts' lotteries licences provide Tatts with a degree of exclusivity, either expressly through the terms of the licence, or as a matter of practicality as Tatts is the sole lotteries licence holder in that jurisdiction.
38. However there are exceptions to Tatts' exclusivity, which vary in each Australian State and Territory, including carve-outs for charitable lotteries and lotteries conducted by third parties offering prizes below a certain monetary threshold. A summary of these exceptions to Tatts' exclusivity is set out in the Lotteries Licences Table at **Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826]** and **Tab 12.1 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0108]**.
39. Tatts' lottery games, known as Oz Lotto, Powerball, Saturday Lotto, Super 66, Monday & Wednesday Lotto, The Pools and Set for Life are games which operate on a national basis through lottery 'blocs' (**Bloc Agreements**). Each bloc member sells entries into the relevant lottery draw and contributes an agreed percentage of the revenue received to the combined prize pool for each draw. The operation of these lottery games through the Bloc Agreements creates larger prize pools which attracts an increased number of entries, with:
- (a) significantly larger jackpots and major prize offers than could otherwise be provided by an individual lottery operator;
 - (b) additional funds being available for Superdraws and bonus draws as well other promotions; and
 - (c) more funds available for distribution across the prize categories or 'divisions'.
40. While the principal lottery operators in the relevant States and Territories are members of the lottery 'blocs', each bloc member markets these national lottery games under its own branding or co-branding within each State or Territory, and also online.
41. Tatts, via its wholly owned subsidiaries, is currently the administrator for all 'bloc' games.
42. As administrator, Tatts calculates the national prize pools, conducts the lottery draws, calculates prize category/division payments, provides reconciliations for settlements between the different member lottery operators, and manages prize reserve funds and game models relating to key game variables impacting game performance. The administration costs of the lottery 'blocs' are shared between the bloc members.
43. Each Australian State and Territory also has its own taxation regime for lottery products. At **Tab 13.1 of Exhibit SM-1 [TAT.001.013.2822]** is a table which has been prepared by Clayton Utz Lawyers and which summarises the tax regime on lottery products in each Australian jurisdiction in which Tatts holds a lottery licences.
44. The ticket prices of Tatts' lottery products are set out on Tatts' lotteries website (www.thelott.com). In each jurisdiction, prices charged by Tatts are the same across Tatts' digital and retail channels. By way of example, at **Tabs 14.1 to 14.8 of Exhibit SM-1** are copies of the pricing pages of the www.thelott.com/nswlotteries website for the following lottery products:
- (a) Monday, Wednesday and Saturday Lotto **[TAT.001.013.2561]**;
 - (b) Lotto Strike **[TAT.001.013.2559]**;
 - (c) Lucky Lotteries **[TAT.001.013.2563]**;
 - (d) Oz Lotto **[TAT.001.013.2565]**;

- (e) Powerball [TAT.001.013.2567];
 - (f) Set for Life [TAT.001.013.2569];
 - (g) The Pools [TAT.001.013.2571]; and
 - (h) Instant Scratch-Its [TAT.001.013.2554].
45. Customers who purchase Tatts' lottery products via Tatts' digital channels (i.e. via Tatts' website www.thelott.com or through Tatts' mobile app) must register and be accepted for an account with Tatts Online, and an account with the relevant Tatts subsidiary which operates lotteries in the customer's State or Territory. The terms and conditions relating to Tatts' accounts are published on Tatts' lotteries website. A copy is at **Tab 15 of Exhibit SM-1** [TAT.001.013.2573].
46. These accounts do not oblige the customer to purchase Tatts' lottery tickets, but merely facilitate the online purchase of Tatts' lottery products. Customers can instruct Tatts to close their accounts at any time, and Tatts may suspend or terminate a customer's account for inactivity. For example in New South Wales, NSW Lotteries may suspend a customer's account for inactivity if the customer has not accessed the account for 12 months, and close the account if it remains inactive for 24 months.
47. Further, both digital and retail customers of Tatts' lottery products can choose to join the relevant loyalty or membership program in the customers' State or Territory. These membership programs are:
- (a) in Queensland: the Winners Circle Card;
 - (b) in NSW and the ACT: the Players Card;
 - (c) in Victoria and Tasmania: the Tatts Card;
 - (d) in the Northern Territory: the Tatts Card; and
 - (e) in South Australia: the Easiplay Card.
48. Membership of these programs is contingent upon the payment of an activation fee and annual administration fee. However, membership in these programs does not oblige the customer to purchase Tatts' lottery products. The customer's participation in these programs is ongoing until the customer chooses to cancel their membership, not to renew their membership, or fails to pay the requisite fees (being an activation fee and annual administration fee).

Competitors of Tatts' lotteries business

49. Based on my experience, in my opinion, lottery players generally do not perceive themselves as gamblers. Because there is a high degree of cross participation across the range of games within Tatts' lotteries portfolio of products, it is my view that the closest competition for lottery products come from within the portfolio and from other discretionary product options available at lottery retail outlets, rather than other gambling products.
50. The table below lists the authorised digital resellers of Tatts' lottery products. I consider the two resellers shaded below to be competitors of Tatts' lotteries business as they offer largely the same product choice as Tatts in markets in which Tatts operates, albeit they sell lottery products online rather than via retail outlets:

Digital re-seller trading name	Company Name(s)	Where digital re-seller is based	Markets that digital re-seller is authorised to operate in	Products digital re-seller is authorised to sell
Oz Lotteries	Jumbo Interactive Pty Ltd (previously TMS Global Pty Ltd) a subsidiary of Jumbo Interactive Limited	Brisbane, Queensland	All Australian States where Tatts operates (excluding Queensland) and overseas markets (including Pacific Islands)	Saturday Lotto Strike Monday and Wednesday Lotto Oz Lotto Powerball The Pools Super 66 Lucky Lotteries (NSW/ACT only)
Lottery Services Pty Ltd	Lottery Services Australia Pty Ltd	Melbourne, Victoria / Darwin, Northern Territory	[HIGHLY Confidential to Tatts]	Saturday Lotto Monday and Wednesday Lotto Oz Lotto Powerball The Pools
Net Lotto	Net Lotto Pty Ltd (formally Lotto Word Pty Ltd)	Brisbane, Queensland	All Australian States where Tatts operates (excluding Queensland) and overseas markets	Super 66
CMS	CMS Pty Ltd	Brisbane, Queensland / Darwin, Northern Territory	[HIGHLY Confidential to Tatts]	
Australian Lottery Company Pty Ltd	Australian Lottery Company Pty Ltd	Darwin, Northern Territory	[HIGHLY Confidential to Tatts]	

51. The authorised digital resellers' commissions for selling Tatts' products are the same amount as if the ticket was sold in a retail outlet. [HIGHLY Confidential to Tatts]

[REDACTED] By comparison, retail outlets in Queensland pay Tatts 1.1% (excl. GST) of the subscription cost.

52. [HIGHLY Confidential to Tatts]

Comparison of lottery products with other products and games

59. On 31 March 2009, Tatts made a submission to the Productivity Commission Inquiry into Gambling, a copy of which submission is at **Tab 18 of Exhibit SM-1 [TAT.001.013.0105]**. I was involved in assisting with that submission in relation to lotteries.

60. At page 6 of the Tatts submission the following was stated, which I agree with:

"Many of our players consider participating in lottery games part of the retail experience and do not view it as gambling. It forms part of their weekly shopping

routine and lottery products are purchased through retail shops operating in a non-gambling environment.

When considering why lottery products are seen in such a different light to other forms of gambling, the following lottery attributes remain relevant:-

- *Lottery players are primarily motivated by the dream of winning a large prize, but it is a relatively inactive (non-continuous) form of gambling*
- *While participation in lotteries is quite high, average player spend on each occasion is low*
- *Product distribution is through retail shops rather than at a dedicated "social" gaming venue*
- *Lotteries are not perceived by players to be a "hard" form of gambling*
- *Players associate lotteries with the return of proceeds to the community through Government spending programmes or special funding services".*

61. Tatts' submission in 2009 also recorded:

"There has been a general slowdown in growth of gambling expenditure since the previous Inquiry in 1999. Lotteries expenditure reached \$1.6 billion in 2005/06, but share of total gambling expenditure was down from 10% to 9.2%. Growth of lotteries expenditure across the period 98/99 to 05/06 was moderate at 3.6%.

Despite solid economic conditions in most states growth in lotteries expenditure has been moderate over the past decade with real per capita expenditure on lottery products remaining stable in almost all states over this period."

62. My understanding of Australian consumer purchasing patterns and views about the purchase of lotteries and other games of chance are based on my experience working for Golden Casket and Tatts over a 26 year period and the matters noted in paragraphs 24 and 25 above.

63. Based on my observations and experience, my opinion is that the level of demand amongst Australian customers for lottery products is distinct from the demand for other games of skill and chance, such as Keno, bingo, gaming machines, wagering on sports and horseracing and casinos. In contrast to the lottery business model described in paragraph 23 above, in my opinion the wagering, gaming machine and casino services generally tend to attract a smaller percentage of the general population, a much higher average spend and a different core motivation for purchase.

64. Based on this, in my opinion I do not consider that any of the following products are close substitutes for, or in competition with, lotteries in general and Tatts' lottery products, in particular:

- (a) the Keno products offered by Tatts and Tabcorp, for the reasons I set out in paragraph 16 above, especially those attributes which make Keno more akin to a betting product and for the reasons set out in paragraph 71 below;
- (b) wagering on racing or other sports. In my opinion, wagering is generally perceived by consumers to be a skill-based gambling product. By contrast, consumers consider lotteries to be a pure chance based game and a product offered for sale mainly in the retail environment; and
- (c) gaming machines. Whereas lottery products are primarily sold in the retail environment, gaming machines are generally perceived by consumers to be a gambling product available only in licensed venues. Whereas consumers generally might play lottery games once or several times per week (or less often), gambling on gaming machines is highly repetitive in nature, involving the consumer placing bets on a large number of spins of the gaming machine within a single interaction,

one immediately after the other. In my opinion, based on my experience, consumers who purchase lottery products do not see lotteries activity as gambling, but would regard playing a gaming machine as gambling.

Comparison of lottery products with Keno

65. Keno is a game of chance where a player wins a prize, if their chosen numbers match some or all of the 20 numbers randomly selected, via a computer system or a ball draw device, out of numbers 1 to 80.
66. Keno usually has a fixed prize scale. The pay-out for each game is established by rules and is independent of the total number of participants who purchase the game.
67. Keno games are quick to enter and played approximately every three minutes at licensed venues, generally pubs and clubs.
68. In South Australia, Keno games are conducted every three and a half minutes, and are sold alongside draw lottery and Instant Scratch games not only in licensed venues, but also (which is unique in South Australia) in retail stores such as newsagencies, convenience stores, supermarkets and chemists. [HIGHLY Confidential to Tatts]
[REDACTED]
69. According to research by Roy Morgan, approximately [HIGHLY Confidential to Tatts] [REDACTED] of the adult population in South Australia play Keno each year. This compares to the [HIGHLY Confidential to Tatts] [REDACTED] appeal of Tatts' lottery and Instant Scratch games, with approximately [HIGHLY Confidential to Tatts] [REDACTED] of the adult population across Australia (excluding Western Australia) playing Tatts' lotteries and scratch products each year. A copy of research by Roy Morgan for the period July 2015 to July 2016 relevant to Keno in South Australia is at **Tab 18 of Highly Confidential Exhibit SM-3 [TAT.001.013.2291]**. A copy of the Roy Morgan research for the period March 2015 to March 2016 relevant to lotteries is at **Tab 19 of Highly Confidential Exhibit SM-3 [TAT.001.013.2292]**.
70. In my opinion, the key characteristics of Keno are:
 - (a) Keno is typically available at licensed venues - although, as stated above and uniquely to South Australia, Tatts also sells games throughout its full lottery retail network including both retail and licensed venues. I also note that, as set out in paragraph 126 below, Tabcorp's ACTTAB business also sells Keno online;
 - (b) Keno allows a player a high level of game interaction - players can choose their odds of winning a prize and indeed the level of prize money they wish to play for; and
 - (c) Keno is suitable for play in a social setting - and therefore fits well within the licensed venue distribution model as a result. Games are played approximately every 3 minutes. In a licensed setting players usually have extended "dwell" time to play and watch the outcome of multiple draws via in venue monitors, again suiting Keno well to a licensed venue offering.
71. In my experience, for the most part, I do not consider draw based lottery products (for example Oz Lotto, Powerball, Saturday Lotto, Monday and Wednesday Lotto, Set for Life and Lucky Lotteries) and Keno products to be close substitutes or competitive. This is because of the following elements of differentiation between these lottery products and Keno products:
 - (a) **Differences in the availability of the product to consumers and the frequency of game play:**

Keno is a game that is played approximately every three minutes, typically at licensed venues (although as outlined above, in South Australia only, Keno can also be played at retail venues). The high frequency of the game means that consumers will often play multiple games at the licensed venue over a period of time and can choose how much they are willing to spend with each game. On the other hand, lottery tickets are largely available through retail outlets and therefore appeal to consumers looking to participate on a 'once a week' or similar basis and are typically purchased as part of a larger basket of consumer goods, such as with newspapers, magazines or gifts.

(b) **Nature of prize and size of the major or Division 1 prize pool:**

The prize pool ranges for Tatts' major lotteries products are:

- (i) Saturday Lotto (\$4 million to \$31 million);
- (ii) Monday and Wednesday Lotto (\$1 million for up to 4 winners);
- (iii) Oz Lotto (\$2 million to \$106 million);
- (iv) Powerball (\$3 million to \$100 million);
- (v) Set for Life (\$20,000 per month for 20 years);
- (vi) Lucky Lotteries (minimum jackpot offer of \$500,000 to \$38 million and first prize of \$100,000 to \$200,000); and
- (vii) Instant Scratch-Its (range of price point from \$1 to \$20 and top prizes from \$25,000 to \$1 million).

In FY16, the Division 1 prize offers for Tatts' main jackpot games were as follows:

- (i) Oz Lotto and Powerball: 45 jackpot events offering a Division 1 prize of \$15 million or more, with the average value of the Division 1 prize across these events being \$28.8 million; and
- (ii) Saturday Lotto: 7 Superdraw events with an average Division 1 prize offer of \$20.86 million, and one Megadraw event with a Division 1 prize offer of \$30 million.

As such, the prize pool of Tatts' lotteries are of a size that appeal to consumers who are looking for a major prize sufficient to be life changing. Generally, and with the exception of periodical rises in the Spot 10 Keno jackpots (explained further below), such large prize pools are not available through Tatts' Keno game in South Australia.

Periodically, the Spot 10 jackpots, being the largest jackpots in Tatts' Keno game, rises to \$2 million or an amount just above. When this occurs, I expect it is likely that some draw based lottery players may begin playing Keno for that jackpot prize. This is because the odds of winning the Spot 10 jackpot in Tatts' Keno is similar to the odds of winning the Division 1 Tatts' draw lotto products (being at 1 in 8 million).

I understand that Tabcorp has recently launched a new Keno product, being Keno Mega Millions, which promises customers the opportunity of larger prize money than is typically offered in standard Keno products, being a base prize of \$5 million for the Spot 10 jackpot. I believe that this may also entice some draw based lotto players to begin playing Keno for those larger jackpot prizes.

(c) **Customer perception:**

However subject to the foregoing comments, in my opinion lottery products are considered unique products by many consumers. This view is based on my

experience and understanding of consumer behaviour as referred to in paragraphs 24 and 25 above which I have gained through many years of working in the lotteries industry and exposure to customer research, global lottery industry associates and feedback from lottery retailers.

Further, according to market research undertaken by Colmar Brunton for Tatts, customers also specifically perceive [HIGHLY Confidential to Tatts] [REDACTED] A presentation by Colmar Brunton dated June 2013 entitled "Tatts Lotteries - SA Brand Audit Quantitative Findings" is at **Tab 20 of Highly Confidential Exhibit SM-3 [TAT.001.013.2492]**.

(d) **Participation Levels:**

According to market research by Roy Morgan for Tatts, approximately [HIGHLY Confidential to Tatts] [REDACTED] of the adult population in South Australia play Keno each year, compared to [HIGHLY Confidential to Tatts] [REDACTED] of the adult population across Australia (excluding Western Australia) who played Tatts' lotteries and scratch products each year. A copy of the research by Roy Morgan for the period July 2015 to July 2016 relevant to Keno in South Australia is at **Tab 18 of Highly Confidential Exhibit SM-3 [TAT.001.013.2291]**. A copy of the Roy Morgan research for the period March 2015 to March 2016 relevant to lotteries is at **Tab 19 of Highly Confidential Exhibit SM-3 [TAT.001.013.2292]**.

72. However, in my opinion, Instant Scratch-Its and Keno do have some similarities in their product attributes and therefore some competition for the disposable dollar is possible in situations where these products are sold in the same outlet or venue (for example, in South Australia, where Tatts' Keno products are also available in some retail outlets such as newsagencies). However, I do not believe that this competition extends to situations where Instant Scratch-Its and Keno are not sold in the same outlet or venue, as these would constitute separate purchase occasions. The reason for this differentiation is that the decision to purchase an Instant Scratch-Its product is often made in store or close to the time of purchase and therefore it is highly unlikely someone would then consider Keno as an alternative option and proceed to find a venue where they could purchase Keno. This view is based on my experience and understanding of consumer behaviour as referred to in paragraphs 24 and 25 above, as well as the research referred to in paragraph 71(c).

73. The similar product attributes between Instant Scratch-Its and Keno referred to in paragraph 72 include:

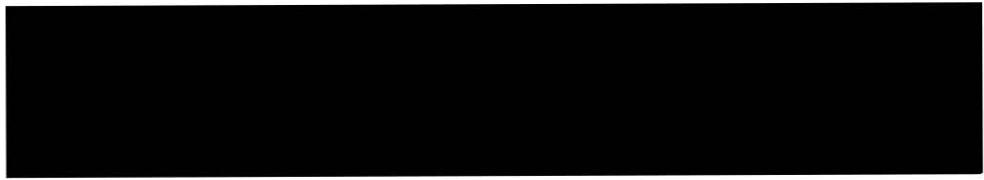
- (a) the ability for players to choose the value of prizes and game style they wish to play;
- (b) the fact that the outcome in both games is or can be known almost immediately rather than waiting for the outcome of a weekly or nightly draw;
- (c) the nature of the purchase being associated with spare change; and
- (d) the perceived ease of winning small prizes.

Competitive Constraints and challenges faced by Tatts' lotteries business

Synthetic Lotteries/Lotto betting derivatives

74. As noted above, Tatts' lotteries operations have recently faced competition from what I refer to as 'synthetic lotteries', being lotto betting derivatives which are offered by corporate bookmakers through Sports Bookmaker Licences obtained in the Northern Territory under the *Racing and Betting Act 1983* (NT). The Sports Bookmaker Licences authorise the licensee to accept wagers by telephone and online.

75. The two main synthetic lottery operators are:

- (a) Lottoland, which operates www.lottoland.com.au. Pursuant to a Northern Territory Sports Bookmaker's Licence issued to its Australian subsidiary Lottoland Australia Pty Ltd, Lottoland enables customers to bet on the outcome of a lottery instead of buying a ticket in the underlying official draw. Currently, Lottoland offers Australian residents (excluding South Australian residents) the opportunity to bet upon various lotteries including:
- (i) Euro Millions and Euro Jackpot;
 - (ii) American Powerball and Mega Millions;
 - (iii) the UK Lotto;
 - (iv) the Irish Lotto;
 - (v) the Swedish Lotto; and
 - (vi) Oz Lotto and Powerball and Australian Saturday, Monday and Wednesday Lotto; and
- (b) Plus Connect (NT) Pty Ltd which operates the Weather Lottery. The Weather Lottery involves the customer selecting seven numbers to win, the numbers selected need to match the decimal point of the temperature in each Australian capital city at noon on the day of the lottery. There is a draw of the lottery every weekday. The top prize for all 7 numbers selected in the correct order is \$1 million.
76. Under the above arrangements, synthetic lottery operators licensed in the Northern Territory and who sell their betting products online do not pay the relevant state-based lottery licence fees, nor the State based lotteries taxes which are paid by Tatts and Lotterywest in other States of Australia (these being the only lottery licence holders in Australia outside the Northern Territory). By operating from the Northern Territory under a Sports Bookmaker's Licence, the synthetic lottery operators are not subjected to any tax in the Northern Territory on their offering as the current Northern Territory tax regimes provide that no tax is payable on betting on non-racing events. Further, unlike synthetic lottery operators, Tatts as a licensed operator of lotteries must, pursuant to the terms of its licence, at all times maintain fully funded and committed prize pools. Synthetic lottery operators do not need to do this, however I assume they will incur costs of insurance to cover potential large payouts to their customers.
77. The cost savings experienced by synthetic lottery operators which I describe in paragraph 76 position them to be able to significantly outspend Tatts in marketing activities. For example, Tatts' Board Item for Discussion entitled "*Lotteries Strategic Response to Synthetic Lottery Products*" dated 30 July 2016 (at **Tab 21 of Highly Confidential Exhibit SM-3 [TAT.001.003.0636]**) records in respect of **[HIGHLY Confidential to Tatts]**
- 
78. Based on my understanding of the synthetic lottery offering, I believe that the cost savings enjoyed by the synthetic lottery operators described in paragraph 76 above assist them to spend considerably more on advertising than Tatts.

Other constraints

79. Tatts also faces some general challenges arising from regulatory restrictions on the retail distribution channels available to Tatts in respect of its lotteries products. In this regard, Tatts is subject to several arrangements/agreements with various Australian State and Territory Governments which limits Tatts' ability to expand its retail network beyond retail businesses such as newsagencies, petrol stations and convenience stores. The challenge for Tatts is ensuring that there is a sufficient retail distribution channel for its lotteries products to

maximise sales including as a result of the declining number of newsagencies and the declining foot traffic through newsagencies.

80. This constraint is of particular significance in New South Wales, where following discussions with the State Government, Tatts has undertaken not to sell its lottery products in large supermarkets (chains), as announced in a media release by the NSW Treasurer dated 30 January 2015, as follows:

"A Memorandum of Understanding has been agreed by both parties, ensuring newsagents remain the major outlets for lottery sales while a deal on a franchise agreement between the parties can be reached. Under the agreement that has been signed:

- *Tatts Group will undertake not to expand the network of franchises into supermarket chains for three years from April 1 2015 to March 31 2018;*
- *The NSW Government will provide support to the existing network of franchises to update their point of sale shop fitting to the standard required by Tatts under the franchise agreement."*

At Tab 19 of Exhibit SM-1 [TAT.001.013.1633] is a copy of that media release. The background to this undertaking, recorded in the CEO Report dated 19 February 2015 at Tab 22 of Highly Confidential Exhibit SM-3 [TAT.001.002.06351] is that [HIGHLY Confidential to Tatts]

Background and history of Tatts' bidding process to acquire its lotteries licences

81. I set out in paragraphs 82 to 106 below, details of Tatts' lotteries licence bidding history on a state-by-state basis.

New South Wales

82. In New South Wales, Tatts (through its subsidiary NSW Lotteries) holds an exclusive NSW Lotteries Operator Licence and a number of Product Licences which are exclusive to 1 April 2050. These licences are summarised in the Lotteries Licences Table at Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826] and Tab 12.1 of Exhibit SM-1 (with confidential information redacted) [TAT.001.030.0108].
83. Tatts was granted these licences on 31 March 2010 following a competitive bidding process for the then State Government-owned NSW Lotteries Corporation. According to a media release from the NSW Treasurer dated 2 March 2010, Tatts was selected as the new operator following a highly successful and competitive process involving both domestic and international parties. At Tab 12.3 of Exhibit SM-1 [TAT.001.013.0001] is a copy of that media release.
84. According to the NSW Auditor-General's Report Performance Review of the NSW Lotteries Sale Transaction dated November 2010 (at pg. 12), there were at least three bidders participating in that bidding process. At Tab 20 of Exhibit SM-1 [TAT.001.013.1152] is a copy of that report.
85. I do not know the identity of the other three bidders for the NSW licence in 2010.

Victoria

86. In Victoria, Tatts (through its subsidiary Tattersall's Sweeps) holds a Category 1 Public Lottery Licence which is due to expire on 30 June 2018. This licence is summarised in the Lotteries Licences Table at Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826] and Tab 12.1 of Exhibit SM-1 (with confidential information redacted) [TAT.001.030.0108].

87. Tatts was initially granted this licence following a competitive bidding process in which Tattersall's Sweeps participated in, from 2005 to 2007. Following that process, on 24 October 2007, the Victorian Government granted the following two licences:
- (a) to Tatts, a Category 1 Public Lottery Licence. Broadly, it allowed Tatts to operate Powerball, Oz Lotto, Soccer Pools, Saturday Night Lotto and Super 66; and
 - (b) to Intralot , a corporation whose head office is based in Greece, a Category 2 Public Lottery Licence, which allowed Intralot to conduct daily Keno and Instant Scratch-Its.
88. On 27 October 2014, Intralot announced that, with the consent of the Victorian Government, it surrendered its Category 2 Public Lottery Licence. At **Tab 21 of Exhibit SM-1 [TAT.001.013.1147]** is a copy of a media release published by Intralot on 27 October 2014.
89. As a result, effective 1 February 2015, Tatts was granted the right in Victoria, to conduct Instant Scratch-Its and daily Keno (being the products permitted under Intralot's Category 2 Public Lottery Licence which was surrendered) under Tatts' existing Category 1 Public Lottery Licence through an amendment to that licence, referred to in the Lotteries Licences Table at **Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826]** and **Tab 12.1 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0108]**.
90. Since 1 February 2015, Tatts has offered and sold Instant Scratch-Its products in Victoria through retail outlets such as newsagents and other venues where Tatts offers its Victorian lottery products. However, Tatts has not launched any Keno products in Victoria. I address that matter further below in relation to Tatts' South Australian Keno business.
91. In Victoria, further amendments to Tatts' Category 1 Public Lottery Licence have since been granted, which have added to that licence the right to operate Draw Lotteries (known as Lucky Lotteries) and Set for Life. These further amendments are referred to in the Lotteries Licences Table at **Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826]** and **Tab 12.1 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0108]**.
92. On or about 30 September 2015, the Victorian Government announced that it was undertaking a competitive bidding process for a new proposed lottery licence which is to commence in 2018. As the current licence holder, Tatts is an interested party in the process and expects a decision to be made in June 2017. I do not know which entities the Victorian Government has invited to apply for the new lottery licence to commence in 2018.

South Australia

93. On 26 November 2012, Tatts SA (then known as Tatts Lotteries Bid Co Pty Ltd) was appointed as the Master Agent for the sale of entries into all lottery games operated by the Lotteries Commission of South Australia. This arrangement is due to expire in 2052 and is summarised in the Lotteries Licences Table at **Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826]** and **Tab 12.1 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0108]**. As Master Agent in South Australia, Tatts effectively bears the costs of all lottery games sold in South Australia and earns a master agent fee which is the net margin remaining after payment of prizes, retailer commissions and state and federal taxes.
94. Tatts SA was granted the Master Agency for the South Australian Lotteries following a direct negotiation process with the South Australian Government. The Annual Report of the South Australian Auditor-General for the year ended 30 June 2013, summarises the sale process as follows:

"5.6.2 Method of sale

The SA Lotteries sale process involved direct negotiation with the Tatts Group Ltd (Tatts). The direct negotiation approach was approved by Cabinet in August 2012 on the basis that if the direct negotiation approach did not yield an appropriate return to the State then a subsequent open market process be conducted.

The direct negotiation approach was based on market soundings undertaken by the transaction (sale) adviser.

The direct negotiation approach took into account that Tatts had the capacity to unconditionally pay the highest up front price to be appointed as Master Agent, minimised the risk to the State's ongoing gambling tax revenues, minimised the risk of player and agent disruption during transition and Tatts was considered the dominant lotteries provider in Australia."

At Tab 22.1 of Exhibit SM-1 [TAT.001.013.1565] and Tab 22.2 of Exhibit SM-1 [TAT.001.013.1183] is a copy of that annual report.

Queensland

95. In Queensland, Tatts (through its subsidiary Golden Casket) holds a lottery operator's licence which is due to expire on 31 July 2072. The lottery operator's licence is summarised in the Lotteries Licences Table at Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826] and Tab 12.1 of Exhibit SM-1 (with confidential information redacted) [TAT.001.030.0108].
96. Tatts acquired this licence on 29 June 2007 following direct negotiations with the Queensland government for the acquisition of Golden Casket. At Tab 12.14 of Exhibit SM-1 [TAT.001.013.1649] is a copy of a media release by the Premier of Queensland dated 16 April 2007 confirming the grant of the lottery operator's licence to Tatts.
97. The Australian Competition and Consumer Commission's Public Competition Assessment dated 8 August 2007 regarding Tatts' (then proposed) acquisition of Golden Casket noted as follows:
 - "57. *Market inquiries indicated that the merged entity would face competition from a number of potential competitors for the acquisition of lotteries licences in the future. The ACCC considered that companies with operations in other segments of the broader gambling industry, both in Australia and overseas, would be potential competitors for future lotteries licences..."*

At Tab 23 of Exhibit SM-1 [TAT.001.013.2349] is a copy of that Public Competition Assessment.

98. Since August 2016, the Queensland lottery operator's licence granted to Golden Casket is a non-exclusive licence. However, to my knowledge, there have not been any other lottery product licences issued in Queensland. Accordingly, although the lottery operator's licence is not exclusive, Tatts is currently the sole operator of lotteries in Queensland.

Tasmania

99. In Tasmania, Tatts (through its subsidiaries Golden Casket and Tattersall's Sweeps) holds Foreign Games Permits which are due to expire on 30 June 2018 and 30 June 2020 respectively. Foreign Games Permits are issued by the Tasmanian Government under the *Gaming Control Act 1993* (Tas) and they allow permit holders to sell in Tasmania, tickets in lotteries conducted by them outside of Tasmania, pursuant to lottery licences held by the permit holders in those other Australian jurisdictions.
100. Tatts hold the following Foreign Games Permits in Tasmania:
 - (a) a Foreign Games Permit granted to Golden Casket on 1 July 2013, to sell Instant Scratch-Its which expires on 30 June 2018; and
 - (b) a Foreign Games Permit granted to Tattersall's Sweeps on 18 January 2015, to sell TattsLotto, Monday & Wednesday Lotto, Oz Lotto, Powerball, The Pools, Super 66, Lucky Lotteries and Set For Life which is due to expire on 30 June 2020.

Details of these Foreign Games Permits are set out in the Lotteries Licences Table at **Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826]** and **Tab 12.1 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0108]**.

101. The Foreign Games Permits granted to Golden Casket and Tattersall's Sweeps are non-exclusive permits. Up until October 2014, Intralot also had a Foreign Games Permit, which they surrendered at the same time that Intralot surrendered its Category 2 Victorian licence. To my knowledge, Tatts is currently the sole operator of lotteries in Tasmania.

Australian Capital Territory

102. In the Australian Capital Territory, pursuant to the *Pool Betting Act 1964* (ACT) and the *Lotteries Act 1964* (ACT), the Australian Capital Territory Government has granted Tatts (through its subsidiary NSW Lotteries) approvals to:
- (a) carry out within the Australian Capital Territory a pool betting scheme in respect of soccer football pools;
 - (b) conduct Instant Lotteries and Draw Lotteries; and
 - (c) conduct Draw Lotteries, Instant Lotteries, Lotto, Lotto Strike, Oz Lotto, Powerball, Soccer Football Pools and Set for Life.
103. On 1 July 1991, NSW Lotteries obtained approval in the Australian Capital Territory to offer the products described in paragraph 102(a) and 102(b) above and the products at paragraph 102(c) above were approved in the Australian Capital Territory on 3 September 2015. Details of that approval are set out in the Lotteries Licences Table at **Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826]** and **Tab 12.1 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0108]**.
104. **[HIGHLY Confidential to Tatts]** They are also non-exclusive. However, to my knowledge, there are no other approvals for lotteries licences pursuant to the *Pool Betting Act 1964* (ACT) and the *Lotteries Act 1964* (ACT). Accordingly, although the lotteries licences held by Tatts in the Australian Capital Territory are not exclusive, Tatts is currently the sole operator of lotteries in the Australian Capital Territory.

Northern Territory

105. In the Northern Territory, Tatts (through its subsidiaries Golden Casket and Tatts NT) holds the following permits, rights and licences:
- (a) Golden Casket holds a permit to sell tickets in specified foreign lotteries, which is due to expire on 30 June 2018; and
 - (b) Tatts NT holds a right to conduct specified lotteries (which is due to expire on 30 June 2032), as well as a licence to promote, conduct and operate Soccer Football Pools issued under the *Soccer Football Pools Act 1978* (NT) (which is due to expire on 29 July 2022);
- These permits, rights and licences are summarised in the Lotteries Licences Table at **Tab 16.1 of Highly Confidential Exhibit SM-3 [TAT.001.013.2826]** and **Tab 12.1 of Exhibit SM-1** (with confidential information redacted) **[TAT.001.030.0108]**.
106. The permits, rights and licences granted in the Northern Territory to Golden Casket and Tatts NT are non-exclusive, although they confer upon Tatts the exclusive right to operate the specific lottery products to which they relate. However, to my knowledge, there are no other permits, rights or licences issued in the Northern Territory to other lottery providers (as distinct from licences issued to a bookmaker who offers bets on the outcome of lotteries). Accordingly, although the permits, rights and licences held by Tatts in the NT are not exclusive, Tatts is currently the sole operator of lotteries in the Northern Territory.

An overview of Keno licences in Australia

107. Keno products are subject to separate licensing in each Australian State and Territory (except South Australia where Keno is conducted pursuant to Tatts' appointment as Master Agent by the South Australian Lotteries Commission). In Australia, there is no Government owned entity which conducts Keno activities. All Keno activities in Australia are conducted by private operators, including Tatts in South Australia, and Tabcorp in Victoria, New South Wales, Australian Capital Territory and Queensland.
108. Below is a summary table of Australia's Keno licence arrangements by state from page 24 of chapter one of "A Guide to Australasia's Gambling Industries - 2014/2015" published by the Australasian Gaming Council.

Keno

Table 1-20 Keno licence/exclusivity arrangements in Australia by state/territory

Location	Licensee	Duration
Australian Capital Territory	ACTTAB (Tabcorp Holdings Ltd)	Tabcorp ACT Pty Ltd (a member of the Tabcorp Holdings Limited group) acquired the business of ACTTAB on 14 October 2014. The business will continue to trade under the ACTTAB name.
New South Wales	ClubKeno Holdings Pty Ltd and Tabcorp Holdings Ltd	Tabcorp Holdings Ltd was granted a 50 year approval for the offer of Keno. ClubKeno Holdings Pty Limited (a subsidiary of ClubsNSW) and Keno (NSW) Pty Limited (a subsidiary of Tabcorp Holdings), as joint licensees, hold the current licence for the game of Keno in NSW, which expires in 2022.
Northern Territory	SKYCITY and Lasseters	(North – SKYCITY) until 2015 (South – Lasseters) until 2018
Queensland	Tabcorp Holdings Ltd	Licenced until 2047 (extended from 2022 in 2013).
South Australia	SA Lotteries (Tatts Ltd)	From December 2012 Tatts has exclusive management rights to SA lotteries for a 40 year period.
Tasmania	Federal Group	The Deed of Agreement between the Crown and Federal Hotels Pty Ltd provides exclusive rights for the Federal Group to operate table gaming, gaming machines and Keno throughout the state until 30 June 2018.
Victoria	Tabcorp Holdings Ltd	Licence and exclusivity for 10 years commencing in April 2012. ⁶²
Western Australia	Crown Perth	Operates in casino only. ⁶³

Source: NT Licensing Commission (2011) Annual Report 2010/11, Tabcorp Holdings Ltd (2013) Annual Report 2012/13, Tasmanian Department of Treasury and Finance (2012), Tatts Group Ltd (2013) Annual Report 2012/13 with updates by the AGC.

At Tab 24 of Exhibit SM-1 [TAT.001.013.0129] is a copy of the publication.

109. Having reviewed the table, it accords with my understanding of the current Keno licences in the Australian States and Territories, with the exception of the following:
- (a) in Victoria, Tatts Category 1 Public Lottery Licence has since early 2015 permitted it to offer Keno but Tatts has not launched any Keno games in Victoria, for the reasons explained below;
 - (b) in New South Wales, Tabcorp's Keno licence was recently extended to 1 April 2050. At Tab 25 of Exhibit SM-1 [TAT.001.013.1151] is a copy of a media release by the Deputy Premier of NSW dated 12 February 2016 to this effect;
 - (c) in the Northern Territory, SKYCITY's casino licence, which I understand includes Keno, has been extended to 2031; and
 - (d) in Tasmania, the Federal Group's Keno Licence has been extended to 2023. At Tab 26 of Exhibit SM-1 [TAT.001.013.2489] is a Ministerial Statement by the Tasmanian Treasurer dated 17 March 2016 to this effect.

Tatts' Keno licensing arrangements and product offerings

110. Keno currently constitutes a relatively small portion of Tatts' overall operations, comparative to Tatt's broader wagering, lotteries and gaming operations.
111. At **Tab 27 of Exhibit SM-1 [TAT.001.013.2824]** is a table, which has been prepared by Clayton Utz Lawyers and which sets out Tatts' Keno licensing arrangements in Australia. Having reviewed the table, it accords with my understanding of the Keno licences held by Tatts in certain Australian States and Territories (which I set out in further detail in paragraphs 127 to 138 below).

Keno in South Australia

112. Presently, Tatts conducts Keno operations only in South Australia through its subsidiary, Tatts SA. As at 6 December 2016, Tatts' Keno products in South Australia are sold throughout the following distribution channels:
 - (a) 208 pubs and clubs, including Adelaide Casino;
 - (b) 419 retail outlets (such as newsagencies, convenience stores, chemists, Australia Post outlets, lottery kiosks, etc.); and
 - (c) 150 UBET SA outlets (Tatts UBET wagering operations).
113. Customers purchase Tatts' Keno products in a one-off transaction; there is no obligation upon the customer to continue to purchase Tatts' Keno products over time. Customers can also become members of Tatts' Easiplay Card membership program which allows customers to save "favourite numbers" to be played in a game of Keno. The customer's participation in this program is ongoing until the customer chooses to cancel their membership, not to renew their membership, or fails to pay the requisite fees (being an activation fee and annual administration fee). Membership of the program does not oblige the customer to purchase Tatts' Keno products.
114. The minimum entry cost per game of Keno is \$1 and the maximum entry cost per game is \$100.
115. In South Australia, the legislated minimum Return to Player Percentage for Keno games is 60%. In FY16, Tatts' Return to Player Percentage was **[HIGHLY Confidential to Tatts]**
116. Tatts' approach to managing the promotion of Keno under the Master Agency Agreement in South Australia has been to continue to develop both the product and distribution of the game with initiatives such as:
 - (a) continued expansion of the convenience fuel channel;
 - (b) investment in new screen graphics; and
 - (c) new play coupons and marketing campaigns.
117. **[HIGHLY Confidential to Tatts]**
118. **[HIGHLY Confidential to Tatts]**
119. I believe that if Tabcorp was able to operate Tatts' Keno South Australian business with its Keno business in Australia, it may be able to generate additional sales by combining the prize pools on offer with those in other States and Territories, as the larger the prize pool the greater the potential interest by customers in playing the game.

Keno in Victoria

120. Tatts (through its subsidiary, Tattersall's Sweeps) also has the right to conduct a daily Keno game in Victoria under the Category 1 Public Lottery Licence, following the surrender by Intralot of its Category 2 Licence, and granted to Tatts, as amended and effective 1 February 2015. This essentially allows Tatts to run a Keno game that is drawn once daily. Between 24 October 2007 and 1 February 2015, Intralot had the right to conduct daily Keno activities in Victoria, which it did.
121. I am informed that for an 18 year period leading up to March 2012, through a joint venture partnership between Tabcorp and Tatts, rapid draw Keno games were also conducted in Victoria. This essentially allowed Tabcorp and Tatts to run Keno games that were drawn every 3 minutes. However, from April 2012 onwards, that partnership was dissolved and only Tabcorp offered rapid draw Keno games in Victoria, after it was awarded the Victorian rapid draw Keno licence, which it did primarily through pubs and clubs.
122. I understand Tabcorp has since combined the prize pools for its Keno games in Victoria with its Keno games offered in New South Wales, Queensland and the Australian Capital Territory. This has significantly expanded the size of those pools and allowed for more accelerated jackpotting of the Spot 10 prize. Based on the increased participation in these larger states, the Spot 10 jackpot prize increases quickly to beyond \$2 million before being won. This compares to Tatts' single state Keno game in South Australia where the Spot 10 jackpot accumulates more slowly from its guaranteed base of \$1 million, although it can jackpot progressively above this to above \$2 million.
123. I am not aware of any intention for Tatts to offer or operate daily Keno in Victoria in the near future.
124. I do not consider that there would be sufficient demand from Victorian customers for it to be a profitable or successful venture for Tatts to offer Daily Keno activities to Victorian customers. My reasons are based on the likely inability or difficulty of Tatts being able to establish a big enough player base to generate sufficient prize money, particularly when it would co-exist in the same market as the larger, rapid draw Keno product offered by Tabcorp.
125. Further, to launch a new Keno game in Victoria would require Tatts to invest in and develop the necessary technology and infrastructure as well incur significant marketing and advertising costs and to enter into arrangements with retailers to sell the games. I am unconvinced that Tatts would achieve sufficient sales from a daily Keno offering in Victoria to cover the costs and make an acceptable return. I discuss this in more detail in paragraph 137.

Competitors of Tatts' Keno product

126. As set out in the table at paragraph 108 above, there are several private Keno operators across the Australian states and territories, including Tabcorp. However, other than Tabcorp, via its ACTTAB business, no other Keno operator currently sells Keno online in jurisdictions in which the operator is not licensed. As such, no Keno operator, except for Tabcorp, sells Keno products in jurisdictions in which the operator is not licensed.

Background and history of Tatts' bidding process to acquire its Keno licences

127. As set out in **Tab 27 of Exhibit SM-1 [TAT.001.013.2824]**, Tatts currently holds the rights to:
 - (a) exclusively manage the South Australian Keno operations; and
 - (b) operate daily Keno in Victoria.
128. I discuss these Keno licences further at paragraphs 131 to 138 below. **[HIGHLY Confidential to Tatts]**
[REDACTED]

129. Tatts was also involved (but ultimately unsuccessful) in the bidding process for ACTTAB from the ACT government in 2014, which included a Keno licence. I discuss this further at paragraph 138 below.

130. [HIGHLY Confidential to Tatts] [REDACTED]

South Australia

131. In South Australia, Tatts SA holds the rights to exclusively manage the South Australian Keno operations until 2052. Tatts obtained this right pursuant to the South Australian Master Agency Agreement which granted Tatts the right to manage South Australia's lotteries generally.

132. I set out in paragraphs 93 to 94 above the background to the agreement, namely a private negotiation between Tatts and the South Australian government.

133. Prior to the Agreement, Keno operations were conducted by the government run entity Lotteries Commission of South Australia. To my knowledge, no other private operator has ever been appointed as a Master Agent in respect of South Australia's Keno operations.

Victoria

134. In Victoria, Tatts has the right to operate daily Keno pursuant to its Category 1 Public Lottery Licence.

135. I set out in paragraphs 86 to 92 above the background to Tatts' receipt of this right, namely as part of a wider transfer of the products which were originally provided for under Intralot's surrendered Category 2 Public Lottery Licence.

136. As explained in paragraph 123 above, Tatts has not offered Keno pursuant to its daily Keno rights in Victoria.

137. Tatts has not considered it a business priority to assess the commercial viability of nor launch a Keno product in Victoria. Any such assessment would include a quantitative assessment of the incremental revenue potential; projected possible cannibalisation impact on other Tatts products such as scratch-its; ability to compete with other Keno games in the market; launch and ongoing operating costs and ultimately the incremental profit potential. Since acquiring the rights to Keno and Instant Scratch-Its Tatts focus has been on reinvigorating the Instant Scratch-Its portfolio.

Australian Capital Territory

138. I understand that Tabcorp holds an Approval to Conduct Keno in the ACT which expires on 13 October 2064 and that Tabcorp obtained the Approval pursuant to its wider acquisition of ACTTAB from the ACT Government in 2014, following a competitive bidding process. Tatts participated in this bidding process for ACTTAB but was ultimately not successful.

Tatts' policies regarding responsible play of lotteries and Keno

139. While lottery products present a low risk for problem gambling, Tatts is committed to providing its lotteries products in a safe and secure environment and takes its responsible gambling commitments seriously. Tatts' 2016 Annual Report referred to that commitment, and some of Tatts' key initiatives in responsible gambling, at pages 38-39 (a copy of which is at **Tab 3 of Exhibit SM-1 [TAT.001.014.0638]** at .0657). To this end, Tatts has developed responsible gambling programs for its lotteries business to assist those people who may be experiencing problems with their gambling behaviour and to keep its lotteries customers well informed. These programs are reviewed regularly and involve a variety of measures which include:

- (a) providing responsible gambling information to customers compliance with relevant State and Territory legislation, best practice in service of lotteries and to ensure the playing of lotteries is enjoyable for Tatts' customers;

- (b) spend limits, where customers are able to set a spend limit for their online purchases;
- (c) compliance with relevant Australian laws and regulations on advertising and promotions - for example, restrictions on the time of day for TV advertisements, restrictions on player inducements, and laws affecting the content of advertisements; and
- (d) self-exclusion programs, where customers are able to exclude themselves from playing for a period of time.

As an example, **Tab 28 of Exhibit SM-1 [TAT.001.013.2347]** is a copy of the Responsible Gambling page of the www.thelott.com/goldencasket website, which includes information for customers on "Self-Exclusion" and setting a "Spend Limit".

140. Tatts' responsible gambling programs have regard to community expectations and needs in regard to player protection and harm minimisation, and also the applicable manuals and codes of practice in the States and Territories in which Tatts is licensed. For example, in Queensland, the Department of Justice and Attorney General has published the Queensland Responsible Gambling Code of Practice (**Tab 29 of Exhibit SM-1 [TAT.001.017.0067]**) and the Queensland Responsible Gambling Resource Manual. Section G of the Queensland Responsible Gambling Manual (**Tab 30 of Exhibit SM-1 [TAT.001.013.2314]**) which relates to lotteries, was developed in collaboration with Tatts subsidiary Golden Casket.
141. Tatts also delivers responsible gambling compliance training to its staff and an annual refresher course. At **Tab 1 of Confidential Exhibit SM-2 [TAT.001.017.0082]** and **Tab 31 of Exhibit SM-1** (with confidential information redacted) [**TAT.001.030.0023**] is a copy of a presentation delivered at the 2016 refresher course.
142. All lottery retailers and their staff must comply with the requirements of Tatts' Responsible Play Program applicable in each jurisdiction (**the Codes**). By way of example, a copy of the Responsible Gambling Code of Conduct - New South Wales, updated October 2016 is at **Tab 32 of Exhibit SM-1 [TAT.001.017.0105]**.
143. I make this statement conscientiously believing the same to be true to the best of my memory, knowledge and belief.

Dated 8 March 2017



Susan Lynn van der Merwe