

IN THE AUSTRALIAN COMPETITION TRIBUNAL

Statement

No. ACT of 2017

Tabcorp Holdings Limited

Proposed acquisition of Tatts Group Limited by Tabcorp Holdings Limited by way of scheme of arrangement



Statement of: Dr Eliot Forbes
Address: 6 Racecourse Road, Deagon, Queensland 4017
Occupation: Chief Executive Officer
Date: 8 March 2017

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This document contains confidential information which is indicated as follows:
[HIGHLY Confidential to Racing Queensland and Tabcorp] [...]

I, Dr Eliot Forbes, Chief Executive Officer (CEO) of the Racing Queensland Board, trading as Racing Queensland (Racing Queensland) in the State of Queensland say that:

Table with contact information for Tabcorp Holdings Limited (Applicant), including Luke Woodward at Gilbert + Tobin, with phone, fax, and email details, and the address for service in Sydney NSW 2000.

Handwritten signature or mark in the bottom right corner.

## BACKGROUND

- 1 I am currently the CEO of Racing Queensland and have held this role since 22 August 2016. I have been involved in the racing industry for over 20 years as a clinical veterinarian and veterinary steward in Australia and overseas and in racing industry executive level roles.
- 2 I make this statement in relation to an application by Tabcorp Holdings Limited (**Tabcorp**) to the Australian Competition Tribunal for authorisation of the proposed merger of Tatts Group Limited (**Tatts**), in my position as CEO of Racing Queensland, and on behalf of Racing Queensland.

### Current role at Racing Queensland

- 3 My appointment as CEO at Racing Queensland in August 2016 followed a complete change of the Racing Queensland Board as part of broader initiative of the Queensland Government to turnaround the financial position of Racing Queensland. It is well documented (including in the current Racing Queensland Annual Report) that the most significant challenge facing Racing Queensland is its financial position, as it has faced six straight years of losses, including a \$21.8 million loss for 2015-2016.
- 4 I have included a copy of the current Racing Queensland Annual Report for the 2015-2016 financial year (**Annual Report**) at **Annexure EF-1** to this statement. I refer to the Annual Report throughout this statement.
- 5 Given the current financial position of Racing Queensland, my key strategic objective as CEO is to get Racing Queensland back onto a sustainable financial footing. Currently, some of Racing Queensland's shortfall is funded by the State Government, but there is an expectation from Government, and a commitment from Racing Queensland that it should become financially independent by growing revenue and managing costs.
- 6 As CEO of Racing Queensland, I am responsible for the ongoing management of the organisation in accordance with the strategy, policies and programs approved by the Racing Queensland Board (see Annexure EF-1, page 58). Currently there are 132 racing clubs located across the state of Queensland that fall under the broad governance of Racing Queensland (see Annexure EF-1, page 2).
- 7 As CEO, I am responsible for managing an executive leadership team that operates through each of the corporate service areas of Racing, Infrastructure, Sales and Marketing, Strategy, Financial Management and Legal.

### Previous racing industry experience

- 8 I began my professional veterinarian career in the racing industry in 1995 and continued to work as a veterinarian, with a particular focus on equine veterinary practice, until June 2004. My

equine veterinary experience includes roles with international jockey clubs, such as the Macau Jockey Club, the Abu Dhabi Equestrian Club and the Qatar Racing and Equestrian Club.

- 9 Between 2004 – 2010, I was employed by the Emirates Racing Authority (ERA) as the Veterinary Steward, as well as serving as an executive member of the ERA steering committee and sitting on the ERA Steward's Panel from 2005-2010 and on the Appeals Panel from 2006-2010.
- 10 In my capacity as Veterinary Steward at the ERA, I was responsible for racing operations, equine welfare and drug control for the world's richest race, the US\$10 million Dubai World Cup. In my role on the ERA steering committee, I was responsible for the strategic and operational oversight of all racing regulatory functions in the United Arab Emirates.
- 11 During my time at the ERA, I had a key role in successfully launching the equine operations of a new \$3 billion Meydan racecourse in 2010, as well as leading ERA staff and industry participants through a transformation of race day operations and critical integrity processes.
- 12 Prior to commencing my current role at Racing Queensland, I was the CEO of Tasracing, the Tasmanian State-owned three-code racing body, from August 2012 – August 2016. Before my appointment as CEO of Tasracing, I held the role of Chief Operating Officer at Tasracing from July 2010 – July 2012. During my tenure at Tasracing, I:
  - (a) delivered successful commercial outcomes, including a financial turnaround of the company, restoring it to profitability in 2016, driven by, inter alia, race field revenue growth of 53% over a three year period;
  - (b) was responsible for the implementation of new technologies, including the StrideMASTER sectional timing system to assist with thoroughbred performance analysis; and
  - (c) secured key media rights agreements as well as the expansion of the international export of the Tasmanian racing product into France, Singapore and South Africa.

#### Other Representative Roles

- 13 I currently hold the following additional racing representative roles:
  - (a) Alternate Director, board of Racing Australia;
  - (b) Alternate Director, board of Greyhounds Australasia.
  - (c) Member of Veterinary and Analysts Committee for Racing Australia, Harness Racing Australia and Greyhounds Australasia;

- (d) Chairman of the Retirement of Racehorses Committee of Racing Australia;
- (e) Member of the Standardbred Welfare Advisory Group for Harness Racing Australia; and
- (f) Member of the steering committee of the International Forum for the Aftercare of Racehorses.

14 I have also previously held the following relevant positions in the racing industry:

- (a) Alternate Director - Racing Information Services Australia (2013 – 2015);
- (b) Executive Director to Racing Australia Board (2012-2015);
- (c) Executive Council representative, Asian Racing Federation (2006 – 2007); and
- (d) Executive Council representative, International Group of Specialist Racing Veterinarians (2004 – 2010).

#### **RACING QUEENSLAND**

15 The Racing Queensland Board, trading as Racing Queensland (previously the Queensland All Codes Racing Industry Board trading as Racing Queensland), was established under the *Racing Act 2002* (QLD) on 1 May 2013 and is a statutory body under the oversight of the Minister for Racing (see Annexure EF-1, page 2). Racing Queensland oversees the strategic direction for all codes in Queensland (see Annexure EF-1, page 30).

16 Racing Queensland is the control body for the three codes of racing (thoroughbred, harness and greyhound) in Queensland and coordinates, manages and regulates the industry including by:

- (a) making rules of racing;
- (b) licensing race clubs and venues and monitoring their activities and performance;
- (c) allocating race dates;
- (d) administering industry funding and commercial arrangements;
- (e) providing an effective and efficient system for the distribution of prize money; and
- (f) representing the Queensland racing industry on the three peak national bodies: Racing Australia, Harness Racing Australia and Greyhounds Australasia Limited (see Annexure EF-1, page 41).

**Social and economic contribution of Queensland racing industry**

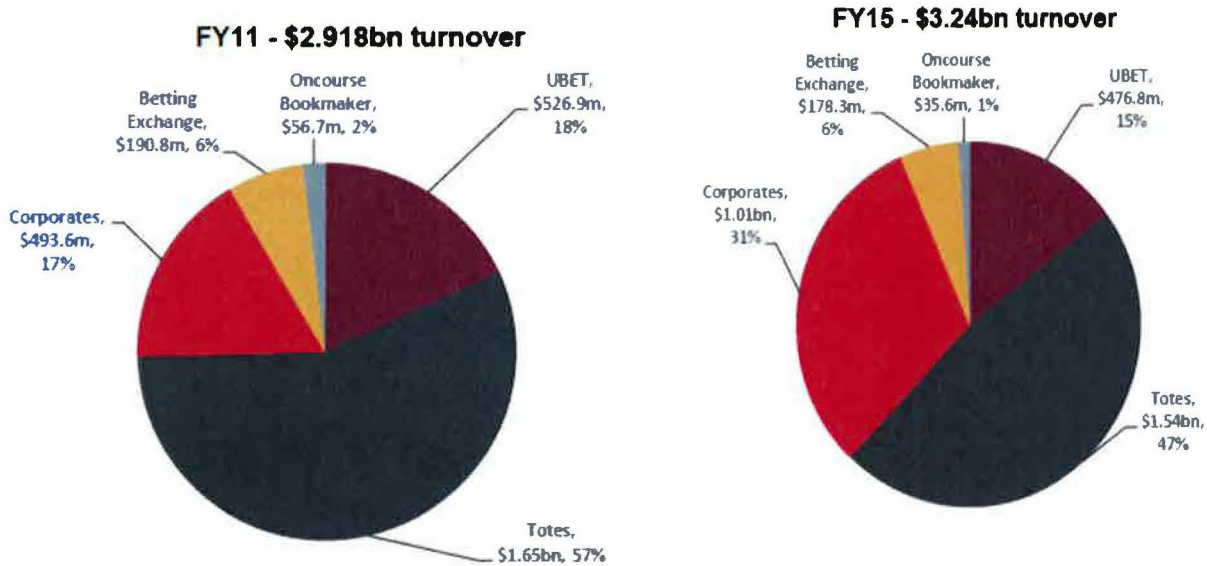
- 17 The racing industry in Queensland contributes to the State Government's objectives for the community in a number of ways, in particular by creating jobs and contributing to the economy.
- 18 I am aware that Racing Queensland commissioned IER Pty Ltd to prepare the "Size and Scope of Racing in Queensland" report that was completed in April 2009 (the **Size and Scope Report**). A copy of the Size and Scope Report is at **Annexure EF-2** to this statement. The Size and Scope Report indicates that the Queensland racing industry employs 29,000 individuals in full time, part time and casual employment (see Annexure EF-2, page 5). Those individuals are employed in a range of vocations from horse and greyhound trainers to veterinary surgeons, stewards, administrators, jockeys and drivers.
- 19 Importantly, the industry provides employment, occupation and opportunity to many people from a wide diversity of backgrounds and skills. This public benefit is most pronounced in regional areas.
- 20 The Queensland racing industry also facilitates employment in a range of related industries from feed and stock to transport and civil works. Breeding industries attract investment from overseas and interstate and produce a range of employment opportunities for Queenslanders (see Annexure EF-1, page 18).
- 21 Racing is conducted across more than 110 venues throughout the State of Queensland, with racecourses in metropolitan and country areas playing a key role in bringing communities together.
- 22 There is a high level of participation in the racing industry in Queensland, as there is throughout Australia. The Annual Report cites the Racing Australia Fact Book in support of this, noting that there were approximately 75,000 individuals in Australia who owned a racehorse in 2014-2015. This means one in every 320 Australians has an interest in a racehorse, compared to just one in around every 8000 people in Great Britain (see Annexure EF-1, page 7).
- 23 Australia has the highest or second highest horse ownership, prizemoney, venues, races, breeding animals and race day attendances per capita in the world. Consequently, our affinity with and love of the animal and race is second to none and is an essential part of the fabric of many communities, especially those in regional and rural areas.
- 24 Racing also provides an essentially egalitarian ethos as a battler's horse can and often does beat a billionaire's in races from the Melbourne Cup through to a country race.

## RACING QUEENSLAND AND INDUSTRY FUNDING ARRANGEMENTS

- 25 The racing industry in Queensland, and elsewhere in Australia, is sustained by wagering revenue as its largest source of income (see Annexure EF-1, page 8, 20). Racing Queensland collects fees from wagering operators, based on wagering turnover and/or net revenue, which it then distributes to the three racing codes, primarily in the form of prize money. In 2015-2016, Racing Queensland received total wagering revenue of \$203.3million.
- 26 UBET Qld Pty Ltd (**UBET**), owned by Tatts, is currently the exclusive licence holder for race and sports wagering in Queensland. UBET operates the "UBET pool" and pools together pari-mutuel bets from Queensland, Northern Territory, South Australia and Tasmania.
- 27 Racing Queensland has a 30-year product agreement in place with UBET, which commenced on 1 July 2014. As part of this agreement, Racing Queensland receives a variable product fee associated with racing, being 39% of gross wagering revenue (both pari-mutuel and fixed odds) and an annual fixed fee of \$15million, indexed at 80% of CPI.
- 28 Racing Queensland also receives revenue from wagering operators, including corporate bookmakers, in the form of "race information fees". This revenue is a function of legislation that requires wagering providers to pay a fee for the use of each Australian State's race field information (see Annexure EF-3, page 55). Under these arrangements, Racing Queensland sets a fee for the use of its race field information and wagering services providers who elect to accept wagers on Queensland racing must pay this fee (see Annexure EF-3, page 55). The fee set for the use of Racing Queensland's race field information is lower than the variable product fee payable by UBET.
- 29 A priority for Racing Queensland is addressing the challenging financial conditions it has faced over the last 5 years. As reported in the Annual Report, Racing Queensland delivered five years of operating losses and had no cash reserves to fund ongoing losses and a loss of \$21.8m for 2015 – 2016 (see Annexure EF-1, page 22).
- 30 As a result, the State Government agreed to fund Racing Queensland's operational cash shortfalls for the short term, on the understanding that Racing Queensland would implement a plan for delivering sustainable operations. Following extensive consultation with State Government, Racing Queensland released the "*Tracking Towards Sustainability Plan*" (the **TTS Plan**) on 3 December 2015. A copy of the TTS Plan is at **Annexure EF-3** to this statement.
- 31 As prizemoney makes up the largest portion of Racing Queensland's expenditure, the TTS introduced an amendment to prizemoney levels taking into consideration the profitability of the industry overall and the profitability of each code. The amendment to prizemoney levels including details of the percentage reduction in prizemoney introduced by the TTS Plan is set out on pages 77 to 80 of the TTS Plan (see Annexure EF-3).

- 32 As outlined in the TTS Plan, Racing Queensland considered that a shift in wagering turnover and the changing nature of industry returns was adversely impacting Racing Queensland's revenue. In particular, the TTS Plan identified the following four key factors in respect of the shift in wagering turnover and the changing nature of industry returns:
- (a) the move away from traditional pari-mutuel betting towards fixed odds betting had reduced Racing Queensland's revenue;
  - (b) increased interstate product fees;
  - (c) wagering activity through corporate bookmakers has increased, while UBET's wagering turnover has plateaued since FY12; and
  - (d) sports wagering has continued to grow (see Annexure EF-3, page 28).
- 33 The TTS Plan forecast that although wagering activity was expected to increase in Queensland, Racing Queensland's revenue was anticipated to decrease due to:
- (a) the increase in wagering activity through corporate bookmakers, from which Racing Queensland receives a lower return; and
  - (b) the shift towards fixed odds wagering, which leads to a lower return for Racing Queensland than traditional pari-mutuel wagering (see Annexure EF-3, page 31).
- 34 The findings of the TTS Report are consistent with my own industry experience, in that I have observed profound shifts in wagering customer behaviour over recent years including a shift towards fixed odds wagering from pari-mutuel betting, as well as a marked decline in wagering through traditional channels, such as retail channels, with the rise of digital and mobile wagering, in particular with corporate bookmakers. There has also been significant growth in wagering on sports which is a competing wagering product.

- 35 The graphs below, extracted from the TTS Plan (see Annexure EF-3, page 28), show the increase in corporate bookmaker's share of wagering turnover between FY2011 – FY2015:



- 36 This decline in UBET's share of wagering revenue negatively affects the revenue that Racing Queensland receives as bets placed with UBET provide Racing Queensland with greater returns than bets placed with corporate bookmakers or interstate totes (page 58 of Annexure EF-3 contains a table which sets out the comparison for the 2015 Financial Year).

**VIEWS ON THE PROPOSED MERGER OF TABCORP AND TATTS**

- 37 I am aware of Tabcorp's proposal to acquire the issued shares of Tatts by way of scheme of arrangement (the **Proposed Transaction**), including from attending briefings and holding discussions with Tabcorp executives regarding the Proposed Transaction.
- 38 I consider that the Proposed Transaction is significant to the racing industry in Queensland because the clear majority of racing industry funding comes from UBET and, if the Proposed Transaction proceeds, this revenue source would ultimately come from a different partner.
- 39 When I first became aware of the Proposed Transaction, I identified as a general commercial concern the relative size and importance of the Queensland operations under a merged entity and the possibility that this could lead to less of a focus on the Queensland racing industry, given the larger wagering markets in NSW and Victoria. I was concerned that, following the Proposed Transaction, Queensland would shift from being the most prominent wagering and racing state under UBET, to less commercially significant for the combined entity.
- 40 Following the announcement of the Proposed Transaction, Racing Queensland relayed this concern to senior representatives of Tabcorp over the period from in or around November 2016 and in or around March 2017. As a result of those discussions, a confidential commercial arrangement has been reached between Racing Queensland and Tabcorp which satisfactorily

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42 [HIGHLY Confidential to Racing Queensland and Tabcorp] [REDACTED]  
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- 43 With the confidential commercial arrangement between Tabcorp and Racing Queensland referred to at paragraph 39 in place, I believe that the Proposed Transaction will be meaningfully beneficial overall to Racing Queensland. I consider that it is likely to improve the financial sustainability of the Queensland racing industry, which is our primary focus. This would in turn facilitate greater financial independence from the Queensland Government and reduce the need for direct financial support from public finances.
- 44 Generally, and quite aside from the commercial arrangement, I consider that the Proposed Transaction is likely to deliver better returns for the racing industry in Queensland because of the relative strength of Tabcorp's business when compared to Tatts. I consider that Tabcorp is better positioned to compete with corporate bookmakers and has the potential to deliver an improved wagering product in Queensland because Tabcorp has:
- (a) invested in innovative technologies, such as the Longitude system (for which I understand Tabcorp holds the exclusive licence), which I consider will help it to develop innovative parimutuel products. This should help to reinvigorate the tote product and put it in a better position to compete with "exotic" products offered by corporate bookmakers;
  - (b) a strong track record managing its yield on its fixed odds book; and
  - (c) a strong, longstanding "TAB" brand in the retail channel, that Queenslanders are familiar with and relate to.
- 45 I understand that Tabcorp considers that one of the potential benefits of the Proposed Transaction is that the merged entity potentially provides a pathway to national pooling. As there has never been a national totalisator pool in Australia, I consider there is a degree of uncertainty around the overall impact a national pool would have in terms of wagering and racing industry funding. However, I do consider that the smaller harness and greyhound codes, which have smaller totalisator pools, would undoubtedly benefit from a national pool, as larger pools provide stability and may reinvigorate pari-mutuel wagering for these codes in competition with the fixed odds offerings of corporate bookmakers. This in turn would lead to greater funding flows to Racing Queensland.
- 46 If, as I expect it would, the Proposed Transaction does result in financial and racing industry funding benefits to Racing Queensland, I consider that one area that these funds would be directed would be to enhance funding for stakes prize money. Racing Queensland is mindful of the need to provide enhanced and comparable prize money to the that on offer in New South Wales and Victoria, as prize money is an essential component of sustaining the depth and quality of Queensland race fields.
- 47 Racing Queensland is familiar with and has an effective working relationship with Tabcorp (and its subsidiary Sky Racing) and is confident that we can work with them as the wagering operator

in Queensland. It is imperative to Racing Queensland's financial sustainability that it has a stronger, successful and effective wagering partner and the success of the Queensland racing industry depends on it, because Racing Queensland's wagering partner provides the primary source of industry funding.

**ANNEXURES**

48 Set out in Schedule "A" of my statement is a table of annexures that I refer to in my statement.



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Signature

**Dr Eliot Forbes, Chief Executive Officer, Racing Queensland.**

Date:  March 2017



## SCHEDULE A

TABLE OF ANNEXURES REFERRED TO IN STATEMENT OF DR ELIOT FORBES

| Annexure | Title  | Confidentiality |
|----------|--|-----------------|
| EF-1     | Racing Queensland Annual Report 2015-2016  | -               |
| EF-2     | "Size and Scope of Racing in Queensland", IER Pty Ltd, dated April 2009                  | -               |
| EF-3     | Racing Queensland " <i>Tracking Towards Sustainability Plan</i> ", dated 3 December 2015 | -               |