

NOTICE OF LODGMENT

AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL on 27/3/2017 5.32 pm AEDST and has been accepted for lodgment under the Practice Direction dated 23 September 2016. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: List of Issues

File Number: ACT 1 of 2017

File Title: Application by Tabcorp Holdings Limited under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT (1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Registry: NEW SOUTH WALES – AUSTRALIAN COMPETITION TRIBUNAL

Dated: 27/3/2017 5.32 pm AEDST



Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Tribunal. Under the Tribunal's Practice Direction the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4:30 pm local time at that Registry) or otherwise the next working day for that Registry.



COMMONWEALTH OF AUSTRALIA

COMPETITION AND CONSUMER ACT 2010

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2017

RE: APPLICATION FOR MERGER AUTHORISATION: ACQUISITION OF
TATTS GROUP LIMITED

Applicant: TABCORP HOLDINGS LIMITED

ACCC ISSUES LIST

Tabcorp Holdings Limited (**Tabcorp**) proposes to acquire all of the shares in Tatts Group Limited (**Tatts**) by means of a scheme of arrangement (**proposed acquisition**).

Tabcorp has applied for authorisation for the proposed acquisition from the Australian Competition Tribunal (**Tribunal**). Tabcorp's application (Form S) is available on the Tribunal website: <http://www.competitiontribunal.gov.au/authorisations>.

The Tribunal must not grant authorisation unless it is satisfied that the proposed acquisition would be likely to result in such a benefit to the public that it should be allowed to occur. This requires consideration of whether the public benefits outweigh any likely detriments.

This Issues List sets out issues that are relevant to the Tribunal's consideration of whether to grant authorisation.

In this Issues List Tabcorp and Tatts are together referred to as the **merger parties**, and the combined Tabcorp and Tatts is referred to as the **merged entity**.

Potential detriments

The proposed acquisition will combine two gambling companies with significant operations in wagering, racing media, gaming services, lotteries and Keno, creating the largest gambling business in Australia.

Separate relevant markets appear to exist for the supply of wagering products, racing media broadcast rights, a range of gaming related systems and services, and lotteries and Keno products.

Given the breadth of overlap between Tabcorp and Tatts in the supply of a range of gambling related products and services, a number of relevant issues arise for consideration.

Wagering

Are there detriments in wagering markets?

The proposed acquisition will result in the combination of the totalisator¹ and wagering operations (retail bricks and mortar, online and telephone) of the merger parties in all states and territories, except Western Australia. Tabcorp and Tatts provide the only pari-mutuel² racing product wagering options in the eastern states of Australia.

Corporate bookmakers (for example Sportsbet, CrownBet, William Hill, Ladbrokes and Bet365) compete with Tabcorp and Tatts in online and telephone channels in the supply of fixed odds and tote-derivative³ products.

Issue 1: An issue for consideration is whether corporate bookmakers will provide a sufficient competitive constraint to the merged entity given that they are limited in the wagering products (fixed odds) and channels (online and telephone) in which they can compete directly with the merged entity.

This issue raises the following questions:

- a) Do separate wagering product markets exist? In particular, are there separate product markets for the supply of totalisator (pari-mutuel) products and fixed odds products, or for the supply of racing products and sports (non-racing) products?
- b) Do separate wagering markets exist for distinct distribution channels, in particular retail (bricks and mortar) wagering and digital (online) wagering?
- c) Do separate functional markets exist across the wagering supply chain? In particular, are there separate upstream markets, including bidding for totalisator and retail licences, access to pooling arrangements or acquisition of racing media broadcast rights?
- d) Will corporate bookmakers competitively constrain the merged entity in the supply of wagering products?
- e) Are there customers for whom the corporate bookmakers are not an option or are not seen as a substitute for the wagering products provided by the merger parties?

Are there detriments arising from the removal of a close competitor in bidding processes for wagering licences?

Wagering licences are generally long term with many years until the expiry of their current terms. However, the following licences may be contestable in the foreseeable future:

- The potential privatisation of the WA TAB.
- The Victorian retail and totalisator wagering licence in 2024.

¹ In totalisator or pari-mutuel wagering, an operator establishes 'totalisator pools' for individual racing events. All pari-mutuel bets accepted by the operator on the relevant event are consolidated into the totalisator pool created for that event, and the pari-mutuel operator deducts from the pool a predetermined fixed commission percentage (take-out rate) which is regulated through state and territory government legislation. The remainder of the pool (referred to as the 'dividend pool') is divided by the number of units bet on the successful outcome and is available for distribution to the winning customers.

² See footnote 1 above

³ Tote derivative products are a wagering product whereby the payout odds replicate those available on the totalisators. Customers are able to bet on derivative products such as 'top tote', where they receive the best odds available across the three totalisators. Corporate bookmakers, in some cases, also offer a bonus on top of the standard dividend.

Issue 2: An issue for consideration is whether the proposed acquisition would remove Tatts as the only other credible bidder to Tabcorp for wagering licences.

New entrants may be unlikely to be credible alternative bidders for future wagering licences, and may be less likely to consider bidding for a licence following the proposed acquisition, due to:

- Lack of expertise in operating retail wagering networks, and an unwillingness to support less attractive retail outlets with limited turnover as required by state and territory governments.
- The inability to build scale in the medium-term as most licences in other states and territories will not expire for many years.
- Uncertainty regarding the ability to secure racing vision, which is an essential input for the operation of a retail wagering outlet.
- Uncertainty regarding the ability to obtain access to pooling arrangements (if required) on reasonable commercial terms.

This issue raises the following questions:

- a) Are Tabcorp and Tatts each other's closest competitors for state and territory wagering licences?
- b) To what extent is the proposed acquisition likely to reduce competition in any future state or territory government bidding processes for a particular licence? Would the removal of Tatts as a potential bidder for a particular licence be likely to result in the merged entity being the only credible bidder for that licence?
- c) Would the removal of Tatts be likely to materially reduce the licence value or benefits to the racing industry that can be achieved by state and territory governments?
- d) Are state and territory governments likely to have countervailing power such that they are able to maximise the value of a licence or benefits to the racing industry irrespective of any reduction in competing bidders?
- e) Does any reduction in the number of bidders for licences affect competition in the supply of wagering products to customers or result in other public detriments?
- f) Does the proposed acquisition exacerbate any existing scale or incumbency advantages that Tabcorp and Tatts may have as current licence holders? If so, will this raise barriers to entry to wagering markets?
- g) Are there any conditions capable of effectively addressing any detriments arising from the proposed acquisition with respect to bidding for licences?

Are there detriments in respect of pooling services?

Tabcorp currently provides pooling services to a third party totalisator, Racing and Wagering Western Australia (**RWWA**) (operator of the Western Australian TAB). While Tatts does not currently pool with any entities outside of the Tatts Group, it is possible that this position could change without the proposed acquisition.

Issue 3: An issue for consideration is whether the proposed acquisition will remove the only other potential supplier of pooling services in Australia, resulting in the merged entity having increased market power in negotiating pooling arrangements.

Tabcorp has proposed commitments to RWWA in relation to the ongoing provision of pooling services. The proposed commitments are high level in nature and a detailed agreement between Tabcorp and RWWA reflecting the commitments has not been finalised.

Tabcorp has agreed to continue to provide RWWA, or any acquirer of the WA TAB, with pooling services on equivalent commercial terms for up to 27 years. The supply of pooling services post 2024 is conditional on Tabcorp holding the Victorian licence after its expiry in 2024, or if Tabcorp does not hold that licence, it must hold another wagering licence with a substantial totalisator pool so that it can provide access to alternative or comparable pools.

This issue raises the following questions:

- a) Does the proposed acquisition result in the removal of Tatts as a potential provider of pooling services to third party totalisators either currently or to future new entrants?
- b) Does Tatts, as the only other potential supplier of pooling services in Australia, currently constrain Tabcorp when supplying pooling services? What is the likely effect of the removal of Tatts, as a potential provider of pooling services, on the barriers to entry for potential bidders in future wagering licence processes or new entrants which may seek to acquire existing totalisators, such as the WA TAB?
- c) Does Tatts have the ability to supply pooling services or, if not, the incentive to obtain the capabilities to do so? Without the proposed acquisition, is Tatts likely to invest in its system capabilities to implement ITSP technology, the globally-accepted protocol for inter-tote communications, to facilitate supply of third party pooling services?
- d) Are the proposed commitments to RWWA likely to effectively address any detriments arising from the proposed acquisition?

Racing media

There is a strong connection between the ability of customers to view a race and the wagering activity generated by that race, with history demonstrating that wagering activity on a given race drops substantially when racing vision is restricted.

Tabcorp's racing media business, Sky Racing (**Sky**), holds exclusive rights to broadcast 94 per cent of racing content throughout Australia. Sky is currently vertically integrated with Tabcorp's totalisator/retail wagering operations in jurisdictions where Tabcorp holds the relevant exclusive licence (Victoria, New South Wales (**NSW**) and the ACT).

The proposed acquisition will result in the combination of Sky, the dominant broadcaster of racing content, with the totalisator/retail wagering operator in Tatts' retail jurisdictions (Queensland, South Australia, Tasmania and the Northern Territory). Therefore, following the acquisition, the merged entity would be vertically integrated as the dominant broadcaster of racing content and the totalisator/retail wagering operator in all states and territories (except Western Australia).

It is relevant to consider whether the merged entity will have an ability to leverage any enhanced influence or power in its dealings with:

- racing media rights holders (whether principal racing authorities (**PRAs**), or separate racing bodies or clubs); and
- licensed venues that supply retail wagering services and display race vision (Sky) to wagering customers.

Are there detriments which result from any enhanced influence or power the merged entity has in its dealings with racing media rights holders?

Issue 4: A preliminary issue is whether, as the dominant broadcaster of racing media content, Tabcorp/Sky is able to influence the level of wagering turnover generated by a race. For example, by determining whether races are broadcast on the primary wagering channel (Sky Racing 1) or demoting races to the secondary wagering channel (Sky Racing 2) or otherwise engaging in “blackout” conduct where vision for a race is not broadcast on Sky. This relates to whether Tabcorp/Sky currently has a significant degree of power or influence in its dealings with racing bodies because returns to racing bodies are driven by the amount of wagering that occurs on their racing product.

This issue raises the following questions:

- a) Does a separate market exist for the supply and acquisition of racing media broadcast rights (including for separate modes of delivery: digital, free-to-air television, commercial and domestic subscription television)?
- b) Are any such racing media markets relevant to an assessment of the competition effects of the proposed acquisition?
- c) Does Sky have the ability and incentive to influence the level of wagering turnover generated by a race?
- d) How important is it to racing bodies that their races are shown in retail outlets in their home State/Territory and elsewhere?

Issue 5: If Tabcorp does have influence or power in its dealings with racing bodies through control of Sky, an issue for consideration is whether the merged entity will have materially enhanced leverage in its dealings with racing media rights holders in Tatts retail jurisdictions (Queensland, South Australia, Tasmania and Northern Territory).

In considering whether the merged entity may have materially enhanced leverage in its dealings with racing media rights holders, it is relevant to consider the following:

- The merged entity will have the primary wagering relationship with PRAs.
- PRAs in a formal or economic joint venture with the merged entity may be financially incentivised to maximise wagering with the merged entity and minimise revenue leakage to corporate bookmakers. The increased economic dependence between racing bodies and the merged entity may result in foreclosure of competing broadcasters of racing media rights.
- The merged entity would be in a position to control whose broadcast signals are shown in the retail wagering outlets in Tatts retail jurisdictions. This may provide the merged entity with the option of limiting the ability of competing broadcasters to negotiate the supply of racing vision in Tatts retail wagering outlets. This in turn may diminish the ability of competing broadcasters to acquire media rights from racing authorities in Tatts jurisdictions due to the uncertain prospect of their ability to exploit these rights.

This issue raises the following questions:

- a) Will the combination of Sky and the retail wagering operations in Tatts’ retail jurisdictions (Queensland, South Australia, Tasmania and Northern Territory) provide the merged entity with an increased ability to deter racing bodies from supplying racing media rights to competing broadcasters or wagering operators?
- b) Will the proposed acquisition increase Sky’s ability to acquire racing media broadcast rights on an exclusive and fully bundled (including digital, free-to-air and pay

television) basis? If so, what impact will this have on competing broadcasters of racing content or wagering operators?

- c) Will the merged entity have increased leverage in its racing media rights negotiations with racing bodies (particularly in Queensland, South Australia, Tasmania and Northern Territory) because the merged entity:
- i. will have the primary wagering relationship with the PRA which controls the main source of funding for the relevant racing bodies?
 - ii. is able to control which broadcast signals are shown in retail wagering networks in these jurisdictions and may be able to refuse a sub-licence to display the vision on Sky (content can be sub-licensed to Sky by the primary acquirer of the media rights for broadcast in retail bricks and mortar outlets)?
- d) What are the nature and extent of barriers to entry and expansion for potential acquirers or broadcasters of racing media vision? In particular:
- i. are the contracts currently held by Sky with rights holders a barrier to entry or expansion for competing broadcasters?
 - ii. what are the constraints faced by racing bodies in commencing a similar venture to that of Racing.com to exploit their own racing media rights?
- e) Do the major racing bodies in Victoria and New South Wales have greater bargaining power in their media rights negotiations than racing bodies in other jurisdictions due to the quality or profile of their racing product?
- f) Have Sky (and/or Tabcorp) previously engaged in strategic conduct to deter entry or expansion by media rights acquirers? Will the proposed acquisition increase barriers, including Tabcorp's ability to engage in strategic conduct?
- g) To what extent is Tatts likely, without the proposed acquisition, to compete directly for the acquisition of racing media broadcast rights? Would Tatts, without the proposed acquisition, have an incentive to support the expansion of a competing broadcaster of racing content to increase competition with Sky?
- h) Are there any conditions capable of effectively addressing any detriments arising from the proposed acquisition with respect to the merged entity's influence or power in its dealings with racing media rights holders? If so, what is the nature of any such conditions?

Are there detriments which result from any enhanced influence or power the merged entity has in its dealings with licensed venues?

Tabcorp requires venues with Tabcorp retail bricks and mortar wagering facilities to subscribe to Sky and display certain Sky channels in their venue. Sky is currently the only service offering 'wall-to-wall' racing vision.

Issue 6: If Tabcorp does have the ability to use its control of Sky to influence the behaviour of a venue, an issue for consideration is whether the merged entity will have materially enhanced leverage in its dealings with licensed venues that supply wagering services/race vision in Tatts retail jurisdictions (Queensland, South Australia, Tasmania and the Northern Territory). It is relevant to consider whether the merged entity will have the ability and incentive to choose not to provide access to Sky to venues, unless the venue is willing to acquire the merged entity's retail wagering services exclusively.

This issue raises the following questions:

- a) Does Tabcorp currently use, or have the ability to use, its control of Sky to influence the behaviour of a venue to acquire Tabcorp's retail wagering services to the exclusion of arrangements with other parties, including competing wagering operators? Has Tabcorp sought to deter venues from entering into arrangements with competing wagering operators through its control of Sky?
- b) Does the proposed acquisition, as a result of the combination of Sky with Tatts' retail wagering operations in Queensland, South Australia, Tasmania and Northern Territory increase the merged entity's influence or power in its dealings with venues in these states and territories?
- c) Are there any conditions capable of effectively addressing any detriments arising from the proposed acquisition with respect to the merged entity's influence or power in its dealings with licensed venues? If so, what is the nature of any such conditions?

Gaming

Nearly all states and territories in Australia have electronic gaming machines (**EGMs**) – also known as 'pokies' – available at licensed gaming venues (such as pubs, clubs and hotels).

Gaming venues with EGMs are required to obtain licensed monitoring operator services. State and territory governments require EGMs to be monitored for integrity, compliance and taxation purposes. Commercial monitoring operators are licensed to provide these services in most states and territories, including exclusively in New South Wales and Victoria, and non-exclusively in Queensland.

The licensed monitoring operator collects a large amount of data necessary to carry out its monitoring functions, including transactional data associated with game play of an EGM including wins, turnover and payouts.

Gaming systems and related services are supplied to gaming venues to allow them to manage and enhance the operation of their EGMs, including through analysis of customer and gaming data in venues. Some gaming systems and related services can be provided on a stand-alone basis, although often venues acquire a bundle of systems and services as part of an integrated solution.

Is the proposed divestment of Odyssey likely to effectively address detriments arising from the combination of the two active EGM monitoring operators in Queensland?

In Queensland, there are currently two active EGM monitoring companies, one owned by Tabcorp (Odyssey) and one owned by Tatts (Maxgaming). Tabcorp and Tatts both also provide gaming systems and related services in Queensland. Tabcorp has proposed, as a condition of authorisation, to divest Odyssey to address potential competition concerns arising from the combination of Maxgaming and Odyssey.

Odyssey's principal business is being a licensed monitoring operator. It provides monitoring services in respect of approximately 8,600 EGMs in Queensland through the Sentinel Monitoring System (**Sentinel System**). In addition, Odyssey provides:

- Repair and maintenance services and installation work on EGMs through its in-house field services operations, as well as through a number of licensed service contractors throughout Queensland.

- In-venue gaming systems and related services through a distribution arrangement with eBET Gaming Systems Pty Ltd (**eBET**) (owned by Intecq, which is wholly owned by Tabcorp) for the Metropolis Gaming System.

Tabcorp is proposing the purchaser of Odyssey will obtain the following assets:

- Odyssey's monitoring licence
- the Sentinel System
- relevant staff, including Odyssey's EGM repair and maintenance staff and contracts with independent third-party service contractors (that provide EGM repair and maintenance services on behalf of Odyssey)
- customers (through the acquisition of relevant contracts).

Tabcorp proposes to transfer ownership of the Sentinel System to Odyssey or other entities which will be wholly owned subsidiaries of Odyssey as at the date of divestment.

In Queensland, all in-venue systems must interface with a monitoring system. Currently, the Sentinel System used by Odyssey to supply monitoring services only interfaces with Tabcorp's own gaming systems. The Sentinel System is configured in a manner which only supports Tabcorp's eBET in-venue systems (which will be retained by Tabcorp).

Tabcorp is proposing to develop, and make available as an open source software, certain application programming interfaces for the Sentinel System (**Sentinel System API**) so that the Sentinel System can be used in conjunction with third party in-venue systems. This development is proposed to allow the purchaser of Odyssey to have the Sentinel System integrate with third party in-venue gaming systems. The purchaser may, but is not obliged to, use Sentinel System API. Tabcorp is proposing to complete development of the Sentinel System API following the divestment of Odyssey. Tabcorp will commit to any buyer of Odyssey that the development of Sentinel System API will be completed by 31 December 2017.

Tabcorp is proposing to appoint Odyssey as the exclusive distributor of eBET in-venue systems in Queensland for a period of 18 months. This distribution agreement is proposed to allow the purchaser to continue supplying eBET in-venue systems to its existing and new customers while the Sentinel System API is being developed and the purchaser considers a long-term strategy regarding the supply of in-venue systems. This exclusivity will cease to apply if the purchaser of Odyssey commences, either by itself or in conjunction with another party, distributing, promoting, marketing or selling any system in Queensland, which is similar to, or competitive with, eBET systems.

If requested by the purchaser of Odyssey, for a transitional period the divested business will also receive technical support and transitional services from Tabcorp's eBET.

Tabcorp is proposing the following additional transitional and support arrangements.

- A distribution and supply agreement to provide Odyssey with tier 3 technical support in relation to eBET's in-venue systems and the Astute BI business intelligence and data visualisation tools.
- If required by the purchaser, the parties will enter into a general transitional services agreement between Odyssey and eBET under which eBET will provide, at cost, certain services (such as finance, administration and human resource services) to Odyssey, for a period of up to six months.

Tabcorp is proposing that its gaming system supplier, eBET, will be granted a royalty-free, non-exclusive, perpetual licence to use the Sentinel System. Tabcorp has advised that this is to allow eBET to continue to supply gaming services to the Federal Group in Tasmania and a limited number of foreign-based gaming venues. Tabcorp does not intend to otherwise sell or distribute the Sentinel System following the Odyssey divestment. However, there are no restrictions on Tabcorp should it choose to do so.

The divestment remedy proposal does not impose any non-compete obligations on the purchaser or Tabcorp.

Issue 7: An issue for consideration is whether Tabcorp's proposed divestment of Odyssey is likely to effectively address the detriments arising from the combination of the two active EGM monitoring operators in Queensland.

This issue raises the following questions:

- a) Are the assets Tabcorp proposes to divest sufficient to address detriments arising from the combination of the two active EGM monitoring operators in Queensland?
- b) Are the assets Tabcorp proposes to divest sufficient to create a viable, long-term business that is likely to competitively constrain the merged firm? If not, what else should be included in the divestiture package and why?
- c) Are the following arrangements sufficient to ensure the Odyssey business will not deteriorate after the divestiture:
 - i. the transfer and modification of the Sentinel System?
 - ii. the distribution agreement to allow the purchaser to supply the eBET system?
 - iii. the transitional and support arrangements with eBET?

Are there detriments arising from the combination of the exclusive monitoring operator and the largest supplier of gaming systems in New South Wales?

In New South Wales, the proposed acquisition would result in significant vertical integration between the exclusive monitoring operator and the largest supplier of gaming systems and related services.

Issue 8: An issue for consideration is whether the merged entity would have the ability and incentive to:

- Access and misuse commercially sensitive data of venues to gain a competitive advantage over competing suppliers of gaming systems and related services.
- Foreclose competing suppliers of gaming systems reducing or restricting the functionality of competing gaming systems that operate through the monitoring system.

Tabcorp has advised it has had discussions with Liquor and Gaming NSW in regards to the application of governance principles to Tabcorp, if it becomes the owner of the New South Wales monitoring operator.

Tabcorp has also advised it is currently in negotiations with ClubsNSW to establish a Memorandum of Understanding (**MoU**) between Tabcorp and ClubsNSW. The MoU may cover certain principles of independence and implement certain governance and data protection regimes in connection with Maxgaming's New South Wales monitoring

business which Tabcorp considers complement the corporate governance principles being discussed with Liquor and Gaming NSW.

New protocols are currently being developed in New South Wales, which will involve some connection between the monitoring system and gaming systems. This is consistent with other states such as Queensland, where an in-venue gaming system has to run through the monitoring system. The potential for foreclosure by the merged entity may arise because an in-venue gaming system provider develops their system to ensure it is compatible with the monitoring system and generally, to assist in achieving this functionality between the monitoring and gaming systems, the monitoring operator provides an application programming interface. Currently in Queensland, Maxgaming provides an interface to competing gaming systems providers while Odyssey's systems only provide an interface with Tabcorp's own gaming system (as explained above).

This issue raises the following questions:

- a) Does the proposed acquisition increase the ability or incentives for the merged entity to misuse commercially sensitive data or information?
- b) To what extent will the significant vertical integration in New South Wales foreclose competition by increasing the ability and/or incentives for the merged entity to misuse commercially sensitive data or information?
- c) What commercially sensitive data or information would the merged entity have access to which, if misused, could give rise to competition concerns or other detriments?
- d) Would existing legislative or contractual restrictions, and potential penalties for contravention of those restrictions, constrain the merged entity from misusing commercially sensitive data or information?
- e) Are regulatory restrictions and potential commitments by Tabcorp to Liquor and Gaming NSW, or to ClubsNSW, capable of effectively addressing any detriments arising with respect to the merged entity's access to commercially sensitive data and information?
- f) Will existing suppliers or new entrants of gaming systems and services in New South Wales face difficulties obtaining the appropriate functionality to interface with Tabcorp's monitoring system?
- g) Does the proposed acquisition increase the incentives for the merged entity to restrict the functionality of third-party gaming systems and services by:
 - i. refusing to provide an interface through which third-parties can operate?
 - ii. building an interface that limits the services a third-party could provide?
 - iii. levying excessive fees in return for providing the relevant software interface?

Are there detriments arising from the combination of the two largest suppliers of electronic gaming machine repair and maintenance services in Victoria?

In Victoria, Tabcorp (TGS) and Tatts (Bytecraft) supply EGM repair and maintenance services to gaming venues. TGS and Bytecraft are the largest suppliers of repair and maintenance services in Victoria.

TGS and Bytecraft have different business models. TGS does not supply EGM repair and maintenance services on a standalone basis. The services are provided as part of

TGS' baseline ('core') bundle for TGS' full service solution offering. By comparison, Bytecraft supplies its EGM repair and maintenance services as a standalone service.

Issue 9: An issue for consideration is whether TGS and Bytecraft's repair and maintenance businesses compete closely, or may do so in the future without the proposed acquisition. For example, if TGS commenced supplying repair and maintenance services on a stand-alone basis.

This issue raises the following questions:

- a) What is the nature and extent of existing rivalry or competition between TGS and Bytecraft for EGM repair and maintenance services in Victoria?
- b) To what extent do gaming venues consider TGS' repair and maintenance service to be a key factor when considering TGS' full service solution?
- c) To what extent is the merged entity likely to face effective competition from other suppliers of EGM repair and maintenance services?
- d) Are there other credible suppliers of EGM repair and maintenance services that could / would be likely to enter the Victorian market? What barriers to entry or expansion are new entrants likely to face?
- e) Will the merged entity have the ability and incentive to increase prices and/or decrease the quality of service for EGM repair and maintenance services in Victoria?

Other public detriments

Are there other public detriments arising from the proposed acquisition?

Issue 10: An issue for consideration is whether other public detriments arise from the proposed acquisition.

This issue raises the following questions:

- a) To what extent will the combination of the merger parties' customer information databases across a broad spectrum of gambling products increase the ability of the merged entity to engage in customer profiling, targeted digital marketing and cross selling of a range of gambling products, including to vulnerable problem gamblers?
- b) To what extent will the proposed acquisition reduce the value of future licences or asset sales that can be achieved by state and territory governments, with flow-on effects for government revenue or the racing industry.
- c) Are there any other public detriments that are likely to result from the proposed acquisition? If so, what is the nature and extent of those detriments?

Claimed public benefits

Tabcorp contends that several public benefits are likely to arise from the proposed acquisition.

Cost savings and efficiencies with flow on benefits to the racing industry

Tabcorp claims that the proposed acquisition will lead to operational, performance and strategic improvements including reducing annual operating costs; increasing annual revenue due to business improvements; and removing a commercial barrier to merging Tabcorp's and Tatts' pari-mutuel pools.

Tabcorp considers that more than half of the improvements outlined above will benefit third parties as the merged entity will pay additional funds each year to state racing industries, retail venues, sporting bodies and the Federal and state governments.

In relation to any increase in funding to the racing industry, Tabcorp considers this will result in benefits including helping to ensure the racing industry's long-term viability, help address 'free rider' problems arising from imbalances between state TABs and corporate bookmakers, and have broader economic impacts particularly in regional areas.

Issue 11: An issue for consideration is whether public benefits will arise from the claimed cost saving and efficiencies.

This issue raises the following questions:

- a) Are Tabcorp's cost savings and efficiencies robust and commercially realistic? Are they one off savings or are they enduring? To what extent would business improvements (such as improving the merged entity's fixed odds performance) occur in the absence of the proposed acquisition?
- b) To what extent are Tabcorp's claimed benefits merely transfers between parties (and therefore not actual cost savings)?
- c) What weight should be given to any cost savings and efficiencies flowing to third parties?
- d) Will the proposed acquisition impact on agreements or negotiations between the merged entity and racing bodies and state governments in relation to industry funding? Will the merged entity have increased leverage in future negotiations with state governments concerning funding to the racing industry? Are state governments likely to increase race field fees in the future, and in the absence of the proposed acquisition, to address any funding imbalance due to the rise of corporate bookmakers?

Improved product and service offerings

Tabcorp considers that the improvements outlined above will help the merged entity to compete more effectively with corporate bookmakers in the Tatts retail jurisdictions (Queensland, South Australia, Tasmania and the Northern Territory) and enhance competition for the supply of wagering products. Tabcorp claims that the proposed acquisition will result in customers in the Tatts retail jurisdictions being supplied a broader range of products and services.

Issue 12: An issue for consideration is whether public benefits will arise from the claimed improved product and service offerings.

This issue raises the following question:

- a) To what extent are these outcomes likely to be achieved in the absence of the proposed acquisition?

Pathway to a national pool

Tabcorp claims that the proposed acquisition will remove a commercial barrier to the merging of Tabcorp's and Tatts' pari-mutuel pools and create a pathway to national pooling. A national pool would provide improved stability of projected odds.

Issue 13: An issue for consideration is whether public benefits will arise from the claimed prospect of a national pool following the proposed acquisition.

This issue raises the following questions:

- a) To what extent is a national pool likely to be facilitated by the acquisition? As existing pools under common Tabcorp ownership have not been merged to date, are any benefits attributed to a national pool likely to occur as a direct effect of the proposed acquisition?
- b) Could reduction in choice between totalisator pools be likely to impact on the level of wagering turnover contributed by premium wagering customers?

Increase to gross national income

Tabcorp considers that the improvements outlined above will increase the productive efficiency of the broader Australian economy, including as a result of import substitution and increased tourism.

Issue 14: An issue for consideration is whether public benefits will arise from the claimed increase to gross national income.

This issue raises the following questions:

- a) To what extent should consequential effects be taken into account?
- b) To what extent are the assumptions and modelling used in estimating the claimed increased productive efficiency robust and commercially realistic?

Net public benefit test

Do the benefits to the public outweigh the detriments to the public?

For each of the public benefits claimed by Tabcorp, it is relevant to consider:

- What weight should be attributed to claimed benefits that are commercial benefits?
- What is the nature and extent of the public benefit? Is it enduring and of substance? What is the likely magnitude of the benefit?
- Is the public benefit a consequence of the proposed acquisition, or is it likely to occur with or without the proposed acquisition?

In balancing the benefits and detriments, it is relevant to consider:

- What is the cumulative impact of any competitive detriments and other public detriments resulting from the proposed acquisition?
- Will the proposed acquisition result in such a benefit to the public that it should be allowed to occur and that authorisation should be granted?