

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2017

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

Applicant: Tabcorp Holdings Limited (ACN 063 780 709)

DIRECTIONS

TRIBUNAL: Justice Middleton (President)

DATE OF ORDER: 23 March 2017

WHERE MADE: Melbourne



THE TRIBUNAL DIRECTS THAT:

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

Definitions used in these directions

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



- i. has made an application for leave to intervene in the Proceeding which has not been refused by the Tribunal; or
 - ii. is permitted by the Tribunal pursuant to section 109(2) of the Act to intervene in the Proceeding.
- (f) **Orders** means these orders dated 23 March 2017.
 - (g) **Proceeding** means ACT 1 of 2017 (including any appeals from a decision of the Tribunal in the Proceeding).
 - (h) **Support Staff** means persons providing administrative assistance and includes secretaries, administrative assistants, graduates, IT staff, print room staff and staff of external printing vendors.
 - (i) **Tabcorp** means Tabcorp Holdings Limited.
 - (j) **Tatts** means Tatts Group Limited.
 - (k) **Tribunal** means Australian Competition Tribunal.

Access to Confidential Information

3. The following persons have unrestricted access to the Confidential Information marked either 'Confidential' or 'HIGHLY Confidential', provided such persons keep that material confidential in accordance with these Orders:
 - (a) the Tribunal, Tribunal staff and any other person assisting the Tribunal;
 - (b) the Commission, Commission staff and any other person assisting the Commission in relation to the Proceeding including the Commission's external barristers and solicitors;
 - (c) external consultants and independent experts engaged for the purpose of the Proceeding by the Commission (or the Commission's external solicitors), provided that the Commission's external solicitors have notified the relevant Confidentiality Claimant of the names of such persons; and
 - (d) Support Staff of the persons listed in 3(a)-(c) of these Orders.
4. The following persons have unrestricted access to the Confidential Information marked either 'Confidential' or 'HIGHLY confidential', provided that such persons have signed the confidentiality undertaking in the form attached and marked "Confidentiality Undertaking":
 - (a) external barristers and solicitors retained by Tabcorp or by Tatts or by any Intervener for the purpose of the Proceeding;



- (b) independent experts retained for the purposes of the Proceeding by Tabcorp or by Tatts or by any Intervener (or their external solicitors), with the prior written consent of the Confidentiality Claimant;
 - (c) any other person, with the prior written consent of the Confidentiality Claimant; and
 - (d) Support Staff of the persons listed in paragraphs 4(a)-4(c) of these Orders.
5. The following persons have unrestricted access to the Confidential Information marked 'Confidential', provided that such persons have signed the confidentiality undertaking in the form attached and marked "Confidentiality Undertaking":
- (a) internal legal counsel of Tabcorp or Tatts who directly assist with the day to day conduct of the Proceeding;
 - (b) any other person, with the prior written consent of the Confidentiality Claimant; and
 - (c) Support Staff of the persons listed in paragraphs 5(a) of these Orders.

General orders as to confidentiality

6. On 2 days' notice to the Confidentiality Claimant, the Commission, Tabcorp, Tatts, any other Intervener and any other interested person has liberty to apply for a direction seeking access to Confidential Information. The relevant Confidentiality Claimant and the Commission will be provided with an opportunity to be heard before the Confidential Information is disclosed to any person other than as permitted by these Orders.
7. Until further order of the Tribunal, Confidential Information is not to appear in any transcript of the Proceeding before the Tribunal other than in a confidential copy of the transcript, which shall only be made available to the persons referenced in paragraph 3 of these Orders and otherwise, as permitted by these Orders.
8. Any notice given, or materials that are filed and served in the Proceeding may be given or filed and served by email to the following email addresses:
- (a) Email address for the Tribunal is registry@competitiontribunal.gov.au
 - (b) Email addresses for Tabcorp are Grant.Marjoribanks@hsf.com and smuys@gtlaw.com.au
 - (c) Email address for the Commission is Simon.Uthmeyer@dlapiper.com
 - (d) Email address for Tatts is mcorrigan@claytonutz.com

9. Tabcorp, the Commission, any Intervener and any interested person have general liberty to apply for further directions.

Date entered: 23 March 2017



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

REGISTRAR
Australian Competition Tribunal

Confidentiality Undertaking

No. ACT 1 of 2017

Australian Competition Tribunal

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

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

1. In this undertaking:
 - (a) **Commission** means the Australian Competition and Consumer Commission.
 - (b) **Confidential Information** means all information filed with the Tribunal in the Proceeding in respect of which a claim of confidentiality has been made and which has been made and not refused by the Tribunal and which has been marked either 'Confidential' or 'HIGHLY Confidential'.
 - (c) **Confidentiality Claimant** means, in respect of particular Confidential Information, the person or entity who made a claim of confidentiality in respect of that information.
 - (d) **Confidentiality Directions** means the directions of the Tribunal in the Proceeding dated [date], a copy of which marked "Annexure A" is annexed to this undertaking.
 - (e) **Proceeding** means ACT 1 of 2017 (including any appeals from a decision of the Tribunal in the Proceeding).
 - (f) **Tabcorp** means Tabcorp Holdings Limited.
 - (g) **Tatts** means Tatts Group Limited.
 - (h) **Tribunal** means Australian Competition Tribunal.
2. I will not use the Confidential Information for any purpose other than my work in respect of the Proceeding.

3. I will keep the Confidential Information confidential and will not disclose the Confidential Information directly or indirectly to any person, other than:
 - (a) in respect of Confidential Information marked 'Highly Confidential', the persons permitted to access such information pursuant to the directions 3 and 4 of the Confidentiality Directions or pursuant to any other directions of the Tribunal in the Proceeding related to confidentiality; and
 - (b) in respect of Confidential Information marked 'Confidential', the persons permitted to access such information pursuant to the directions 3, 4 and 5 of the Confidentiality Directions or pursuant to any other directions of the Tribunal in the Proceeding related to confidentiality.
4. To the extent that I have Confidential Information, I will:
 - (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
 - (b) keep the Confidential Information under my effective control; and
 - (c) immediately notify the Confidentiality Claimant in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information, of which I become aware and provide any reasonable assistance requested by the Confidentiality Claimant in relation to any action that the Confidentiality Claimant may take against any person for such unauthorised use or disclosure.
5. Following the final determination of the Proceeding, I will do one of the following:
 - (a) continue to maintain the Confidential Information under my effective control and safeguard it from unauthorised access or use; or
 - (b) destroy the Confidential Information in my possession, custody or control; or
 - (c) return or cause to be returned the Confidential Information in my possession, custody or control, to the Confidentiality Claimant (or its solicitors).
6. I may only vary the terms of this undertaking with the prior written consent of the Confidentiality Claimant (or its solicitors) or by order of the Tribunal.
7. I acknowledge that my obligations in paragraphs 2, 3, 4, 6, 7, 8 and 9 of this undertaking will continue after the final determination of the Proceeding and the destruction or return of the Confidential Information to the Confidentiality Claimant (or its solicitors).
8. I acknowledge that damages are not an adequate remedy for the breach of my obligations in this undertaking and that the Confidentiality Claimant shall be entitled to

equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.

9. I irrevocably submit to the jurisdiction of the Tribunal for the purposes of enforcing the terms of this undertaking, which are governed by the laws of the State of Victoria.

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

Signature of **[name]**

Signature of witness, whose name and address appears below.