



**APPLICATION FOR AUTHORISATION BY THE
AUSTRALIAN COMPETITION TRIBUNAL**

Commonwealth of Australia

COMPETITION AND CONSUMER ACT 2010

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
Interveners: Racing Victoria Limited (ACN 096 917 930)
Harness Racing Victoria (ABN 22 764 910 853)
Greyhound Racing Victoria (ABN 76 642 748 029)

Affidavit of: Alan Clayton
Address: 46-50 Chetwynd Street, West Melbourne, Victoria, 3003
Occupation: Chief Executive Officer of Greyhound Racing Victoria
Date: 18 April 2017

I, **Alan Clayton**, of 46-50 Chetwynd Street, West Melbourne, Victoria, 3003, **Chief Executive Officer**, Greyhound Racing Victoria, affirm:

- 1 I am the **Chief Executive Officer** of Greyhound Racing Victoria.
- 2 I make this affidavit in support of the intervention by Racing Victoria Limited (**Racing Victoria**), Greyhound Racing Victoria and Harness Racing Victoria (**Victorian Racing Interveners**) in the application of Tabcorp Holdings Limited (**Tabcorp**) under section 95AU of the *Competition and Consumer Act 2010* (**Competition and Consumer Act**) for an authorisation under subsection

Filed on behalf of the Interveners	Racing Victoria Limited Greyhound Racing Victoria Harness Racing Victoria	
Prepared by	Nick Taylor / Prudence Smith	
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95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person (**Proposed Merger**) (the **Application to the Tribunal**).

- 3 I have affirmed an earlier affidavit in support of the Interveners, being my affidavit dated 23 March 2017.
- 4 I make this affidavit from my own knowledge, unless stated otherwise. Where I refer in this affidavit to being informed of matters, I ~~believe~~ those matters to be true.
- 5 As the current Chief Executive Officer of Greyhound Racing Victoria, I am required to understand all aspects of its business and the greyhound racing industry, including associated industries related to gambling and wagering, and broadcasting of greyhound racing.
- 6 I have read the affidavit of Giles Thompson, Acting Chief Executive Officer and Chief Financial Officer of Racing Victoria, dated 13 April 2017 in support of the Victorian Racing Interveners (**Thompson Affidavit**).
- 7 I agree with the summary of the Victorian Racing Industry, including its funding sources provided in the Thompson Affidavit.
- 8 Greyhound Racing Victoria holds a similar position in relation to greyhound racing in Victoria as Racing Victoria has in respect of the thoroughbred racing industry in Victoria, and I have the same concerns and issues as noted in the Thompson Affidavit in relation to the application for approval by Tabcorp of the Proposed Merger, which include (but are not limited to):
 - a) The reduction in competitive tension for the 2024 Victorian Retail Licence if the Proposed Merger is permitted to proceed;
 - b) The impact of Tabcorp's ownership of Sky Channel and the increased arbitrage opportunities that the Proposed Merger will allow the merged entity; and
 - c) The analysis of any public benefits and detriments that may be caused by the Proposed Merger.
- 9 In the State of Victoria, there are a total of 13 greyhound racing clubs, which will conduct approximately 1170 greyhound race meetings in the 2016-17 financial year. Greyhound Racing Victoria and these racing clubs (of which 11 are regional) are not-for-profit sporting organisations. Their activities in promoting and staging greyhound racing significantly contribute to the economic and social well-being of local communities in Victoria.
- 10 Greyhound Racing Victoria estimates the following based on an IER study on Victorian Greyhound Racing for the 2015/16 financial year:
 - a) 433 breeders;
 - b) 9,109 Owners and syndicate members;;



- c) 1,659 Trainers;
- d) 696 industry and racing club employees;
- e) 767 employees of participants;
- f) 1,586 volunteers;
- g) 13 race clubs;
- h) 1,128 race meetings;
- i) 13,407 races; and
- j) 208,362 attendees at race meetings.

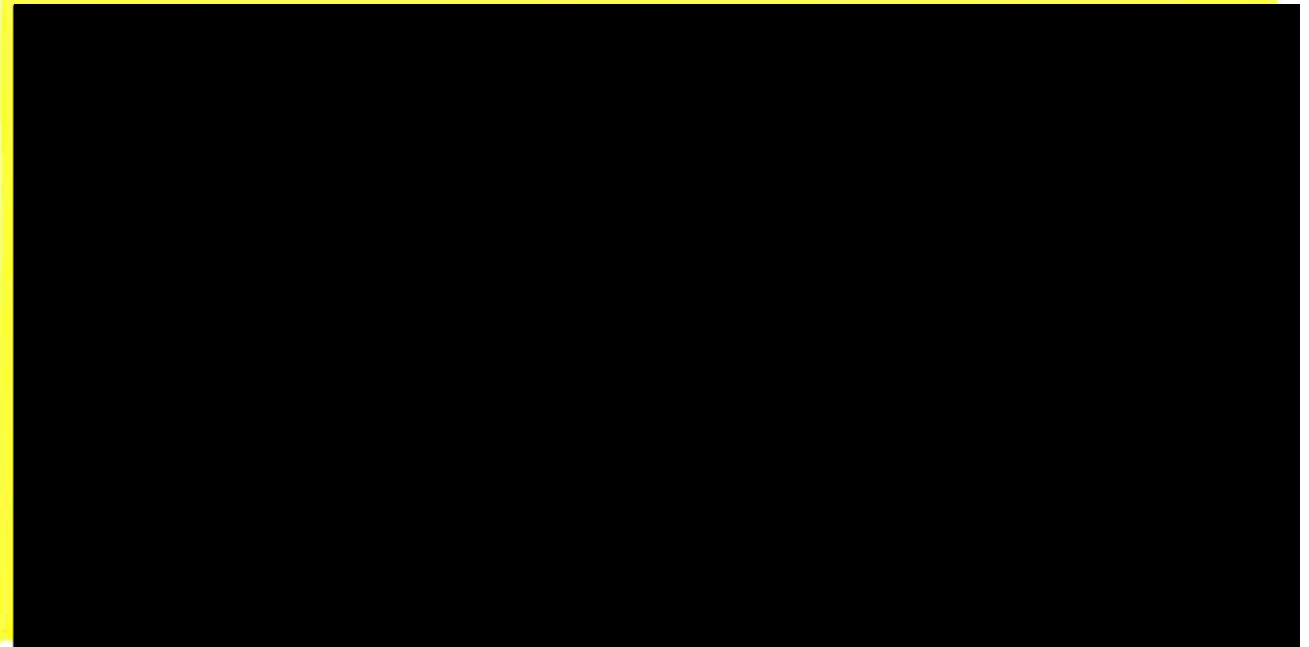
- 11 The independent economic impact study undertaken by IER Pty Ltd, showed that in 2015/16 the Victorian Greyhound Racing industry generated total direct spending of [Highly Confidential to Greyhound Racing Victoria] [REDACTED]. [Highly Confidential to Greyhound Racing Victoria] [REDACTED].
- 12 This expenditure is responsible for creating a direct value added impact (in terms of wages, salaries and profits) of [Highly Confidential to Greyhound Racing Victoria] [REDACTED]. However, the flow on effects linked to this expenditure increase the size of the industry's value added contribution to over [Highly Confidential to Greyhound Racing Victoria] [REDACTED], with just over 42% of the total value added impact occurring in regional areas of Victoria.
- 13 The economic output generated by the greyhound racing industry in Victoria was directly responsible for sustaining 1,216 full time equivalent jobs across the state. The number of individual employees (2,236) was, however, much larger than the FTE number due to the significant amount of part-time, casual and volunteer roles involved in the industry. When flow-on employment impacts are considered, the total FTE impact generated by the Victorian greyhound racing industry rose to 2,888 jobs.
- 14 In 2015-2016, Australians wagered a record [Highly Confidential to Greyhound Racing Victoria] [REDACTED] nationally on Victorian greyhound racing. Tabcorp and Tatts combined represented approximately 55% of national turnover for wagering on Victorian greyhound racing.

A. Joint Venture Distributions for Greyhound Racing Victoria.

- 15 Distributions from the Joint Venture are the largest source of funding for Greyhound Racing Victoria. In the 2015/16 financial year, distributions from the Joint Venture constituted 67% of Greyhound Racing Victoria's funding. Wagering revenue accounted for 96% of Greyhound Racing Victoria's funding during this period [Highly Confidential to Greyhound Racing Victoria] [REDACTED]. The graph below provides the breakdown in sources for funds for Greyhound Racing Victoria in the 2015/16 financial year.

Page 3

- 16 Currently, Greyhound Racing Victoria's revenue from the Joint Venture, combined with Race Fields fees from Tabcorp entities, represents 76% of total revenue. Race fields fees paid by Tatts entities constitutes a further 4%. Under these circumstances, Greyhound Racing Victoria would be reliant on the proposed merged entity for approximately 81% of its total revenue, as depicted in the graph below. **[Highly Confidential to Greyhound Racing Victoria]**



B. Issues of concern arising from the Proposed Merger for Greyhound Racing Victoria.

- 17 The Proposed Merger would, likely have significant anti-competitive effects as well as exacerbate the potential for anti-competitive behavior by the merged entity in the future.
- a) There will be a substantial lessening of competition for the provision of services when the Victorian Government next tenders the retail wagering license;
 - b) Tatts will be removed as a 'counter-weight' to the significant market dominance Tabcorp exercises over retail wagering outlets and Australian racing bodies from owning Sky Channel;
 - c) During the licensing period, Tabcorp and Tatts will achieve almost complete market control in retail and pari-mutuel wagering markets;
 - d) There will be a substantial lessening of competition for the provision of wholesale pooling services because the merged entity will have the opportunity to re-configure these wholesale pooling services between individual States to minimise fees and taxes, as well as directing premium (high-volume) customers to States of their choosing; and
 - e) Licence arbitrage and/or retail outlet arbitrage is a risk.
- 18 Greyhound Racing Victoria also has concerns regarding the increased market power of Sky Channel following the Proposed Merger.

- a) Sky Channel would have increased power to control the national racing schedule, which brings with it a risk that coverage of Victorian and other greyhound racing would be compromised to accommodate other racing codes or racing from jurisdictions which provide better financial returns to Tabcorp;
- b) The ability of Sky Racing to control and/or warehouse international distribution for Victorian greyhound racing product in favour of other racing product from other parts of Australia.

C. Greyhound Racing Victoria's vulnerability to any decrease in funding.

- 19 Based on the information outlined above, any substantial lessening of competition in the wagering sector will have a direct negative impact on the Victorian greyhound racing industry funding.
- 20 This reduction in revenue would subsequently impact Greyhound Racing Victoria's ability to sustain funding for prize money, integrity and animal welfare management, capital infrastructure, education and training and other regulatory and promotional functions.
- 21 It is Greyhound Racing Victoria's view that the proposed merger would have significant impacts on racing industry participants and industry funding, which is integral to competition in relevant markets.
- 22 Greyhound Racing Victoria's dependence on funding from the Joint Venture is demonstrated by the fact that 67% of its revenue was generated from this source in the 2015/16 financial year. That equated to approximately **[Highly Confidential to Greyhound Racing Victoria]** in 2015/16.
- 23 This funding is critical to Greyhound Racing Victoria's ability to produce and maintain a quality racing program which is attractive to wagering customers. Product attractiveness for wagering customers and wagering operators is impacted by consistent field sizes and competitive racing. The attractiveness of the racing product to betting customers is a key driver of wagering turnover for Victorian greyhound racing.
- 24 Greyhound Racing Victoria is the largest producer of racing product (by volume) of any racing code in the Australian wagering market. Greyhound Racing Victoria maintains a consistent program of 23 race meetings per week available for wagering all of which are broadcast on SKY Racing throughout the year. Each of these meetings contains up to 12 races. Victorian greyhound racing's position as a leader in the production of high volume and high quality racing product is as a direct result of the revenue generated through the Joint Venture. A reduction in the volume or quality of Victorian greyhound racing product would have a direct impact on the wagering revenue generated by all segments of the wagering industry.
- 25 Greyhound Racing Victoria revenue derived from the Joint Venture is critical in providing adequate returns to its participants **[Highly Confidential to Greyhound Racing Victoria]** Joint Venture revenue also funds important animal welfare, integrity, greyhound re-homing, participant



education and training and capital improvement programs.

- 26 Any material reduction in funding from the Joint Venture would place the economic viability of greyhound racing in jeopardy for its participants. A reduction would limit Greyhound Racing Victoria's ability to maintain prizemoney at current levels. Any reduction in prizemoney would lead to reduced investments by breeders and owners in racing stock and training facilities. A reduction in investment in breeding or purchasing quality racing stock would subsequently impact on Greyhound Racing Victoria's ability to maintain the racing program.
- 27 A reduction in revenue would also limit the effectiveness of Greyhound Racing Victoria's animal welfare and integrity programs which have become increasingly more expensive over the past two years and are reasonably expected to continue to do so into the future.
- 28 Greyhound Racing Victoria supports the competition concerns outlined in the Thompson affidavit with respect to licence arbitrage. Greyhound Racing Victoria is equally concerned that should the Proposed Merger proceed, the merged entity would be in a position, due its operation of nearly all TAB licences in Australia, to direct wagering activity to the jurisdictions which provide it with the highest net returns. The merged entity would have an ability and incentive to direct a significant volume of wagering activity to the TAB licence where it gains or retains the highest share of wagering revenue and to the one where the combined share paid to the racing industry and in government taxes takes the lowest share of its revenue.
- 29 Further, Greyhound Racing Victoria is concerned with that the merged entity's ownership of SKY, which controls the broadcast and race time scheduling arrangements for all codes of racing throughout Australia. Through its control of scheduling arrangements, the merged entity would have an increased capability and incentive to use scheduling arrangements to disadvantage territories which provide the lowest net returns for the merged entity. This could include disadvantaging territories which charge proportionately higher race fields fees than others.
- 30 If Greyhound Racing Victoria funding from the Joint Venture reduced by 20 per cent for example, this would result in a direct reduction in prizemoney available for participants. A 20 per cent reduction would equate to a reduction of \$12 million. This \$12 million would have to come straight off prizemoney in the first instance resulting in a 28 per cent reduction in prizemoney and returns to participants from \$43 million to \$31 million.
- 31 The reduction in prizemoney would have a flow-on effect, in that prizemoney reductions would lead to reduced industry confidence, leading to reduced investment in breeding, which would result in fewer greyhounds being available for racing. The consequence of this is smaller field sizes and a reduced racing program. The reduction in field sizes and race meetings conducted would lead to lower revenue for Greyhound Racing Victoria from wagering, which would ultimately mean further reductions in funding available for prizemoney and other core Greyhound Racing Victoria programs such as integrity and animal welfare.



Page 6

32 Any reduction in available funding for greyhound racing in Victoria would also directly impact the employment of over 2,200 individuals involved in full time, part-time and casual roles in the industry. Many of these roles are located in regional and rural Victoria.


Affirmed by the deponent on 13 APRIL

at WEST MELBOURNE



Signature of deponent

Before me:



Signature of witness

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of the Legal Profession Uniform Law (Victoria)*