



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 Board, trading as Harness Racing Victoria (ABN 22 764 910 853)
Greyhound Racing Control Board, trading as Greyhound Racing Victoria (ABN 76 642 748 029)

Affidavit of: Giles Mansell Thompson
Address: 400 Epsom Road, Flemington, Victoria, 3031
Occupation: Acting Chief Executive Officer of Racing Victoria Limited
Date: 23 March 2017

I, Giles Mansell Thompson, of 400 Epsom Road, Flemington, Victoria, 3031, Acting CEO, Racing Victoria Limited, affirm:

- 1 I am the Acting Chief Executive Officer of Racing Victoria Limited (**Racing Victoria**).
- 2 I make this affidavit in support of the application of Racing Victoria to the Australian Competition Tribunal to intervene in the application by Tabcorp Holdings Limited (**Tabcorp**) under section 95AU of the *Competition and Consumer Act 2010* (**Competition and Consumer Act**) for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person (**Proposed Merger**).
- 3 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.

Filed on behalf of the Intervener	Racing Victoria Limited Greyhound Racing Victoria Harness Racing Victoria
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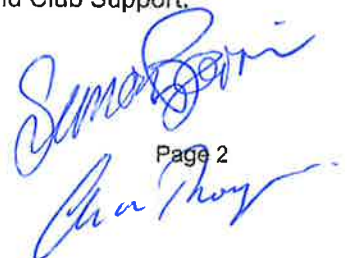

- 4 The matters set out in this affidavit are based on my knowledge and experience gained from over ten years in the thoroughbred racing industry and the gambling and wagering industries, my experience as a qualified chartered accountant and my knowledge of and participation in Racing Victoria's operations as a member of its Executive team. As the current Acting Chief Executive Officer of Racing Victoria, I am required to understand all aspects of its business and the thoroughbred racing industry, including associated industries related to gambling and wagering, and broadcasting of thoroughbred racing.

My background

- 5 I was appointed as Acting Chief Executive Officer of Racing Victoria in December 2016, and began acting in the role on 1 January 2017.
- 6 Prior to commencing my role as Acting CEO of Racing Victoria, I held the role of Chief Financial Officer of Racing Victoria for sixteen months, from 7 September 2015 to 31 December 2016. Prior to joining Racing Victoria:
- (a) I was employed for nine years at Betfair Australia, including in the positions of Chief Executive Officer and Chief Financial Officer.
 - (b) Prior to this, I worked in the media industry for six years, and held senior executive positions with APN News and Media in Queensland and the Financial Times Group in London, New York and Hong Kong.
 - (c) Prior to this, I became qualified as a chartered accountant in London with Deloitte and Touche.

Racing Victoria

- 7 Racing Victoria is an unlisted public company registered under the *Corporations Act 2001* (Cth) and recognised pursuant to the *Racing Act 1958* (Vic) (**Racing Act**) to act as the governing authority for thoroughbred horse racing in Victoria. It is one of three peak racing bodies responsible for the governance of the Victorian Racing Industry. The other two bodies are Harness Racing Victoria and Greyhound Racing Victoria. The three codes of racing are referred to as the Victorian Racing Industry or VRI in my affidavit.
- 8 As an unlisted public company, Racing Victoria is managed by its Board of Directors (**Board**) and its Executive Team.
- 9 Currently, the Board consists of:
- (a) Mike Hirst, Acting Chairman;
 - (b) Michael Andrew AO, Bryan Gurry, Prue Hayes, Mohan Jesudason, Pearse Morgan, Greg Nichols and Alice Williams, Directors.
- 10 Currently, the Executive Team consists of:
- (a) Myself, Acting Chief Executive Officer;
 - (b) Jane Ballantyne, Chief Commercial Officer;
 - (c) Simon Barrile, General Counsel;
 - (d) Dayle Brown, Executive General Manager, Integrity Services;
 - (e) Greg Carpenter, Executive General Manager, Racing; and
 - (f) Jamie McGuinness, Executive General Manager, Infrastructure and Club Support.

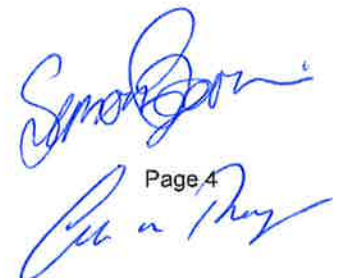
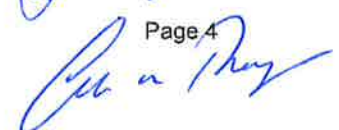

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- 11 Racing Victoria and the Victorian racing clubs are not-for-profit sporting organisations. Their activities in promoting and staging thoroughbred racing significantly contributes to the economic and social well-being of their local communities and to the State of Victoria as a whole.
- 12 Racing Victoria is responsible for, among other things, promoting thoroughbred horse racing in Victoria by licensing and supervising industry participants and providing support and direction for racing clubs. Its constitutional objective is to:
- "encourage, develop, promote and manage the conduct of the racing of thoroughbred horses in Victoria and to do all things the Board [of directors of Racing Victoria] considers to be conducive of doing so".*
- 13 Without limiting the generality of this objective, Racing Victoria pursues the following objectives:
- (a) Providing excellent service to patrons, punters and other customers, and providing a source of exciting entertainment for a wider audience;
 - (b) Managing Victorian thoroughbred racing with optimal efficiency;
 - (c) Encouraging the fullest possible participation in all aspects and at all levels of the Victorian thoroughbred racing industry; and
 - (d) Optimising the economic benefits of Victorian thoroughbred racing to, among others, the communities in which Victorian thoroughbred racing operates and the Victorian economy generally.
- 14 As a not-for-profit organisation, Racing Victoria and the Victorian racing clubs apply their incomes to the development and promotion of racing through the provision of racecourse infrastructure and the payment of prizemoney, which supports the livelihood of industry participants. Beyond direct economic value, thoroughbred racing is also widely regarded as an important social and cultural institution which helps build and connect communities, particularly throughout rural and regional Victoria.
- 15 An independent 2013 study prepared by IER Pty Ltd (**2013 Study**) found that the Victorian Racing Industry as a whole contributed more than \$2.8 billion in real gross value added to the Victorian economy. Thoroughbred racing accounted for approximately \$2.1 billion of this total.
- 16 In the Victorian thoroughbred racing industry:
- (a) There are approximately 72,000 active participants, of which approximately 20,000 are employed full time;
 - (b) There are 55,000 owners of thoroughbred racehorses in Victoria, racing approximately 9,000 thoroughbred horses each year;
 - (c) There are 555 race meetings held in Victoria each year; and
- 17 The Victorian thoroughbred racing industry is presently worth \$2.1 billion to the Victorian state economy. In the 2015/2016 racing year, the Victorian thoroughbred racing industry generated \$5.75 billion in total wagering turnover throughout Australia for Victorian thoroughbred racing. The 2016/2017 racing year has so far experienced a 7% growth in wagering, meaning that the Victorian thoroughbred racing industry is expected to generate over \$6 billion in total wagering turnover for the 2016/2017 racing year.

Victorian Retail License


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- 18 The Victorian Wagering and Betting Licence (**Retail Licence**) is an exclusive licence to conduct pari-mutuel (totalisator) betting and retail wagering services in premises in the State of Victoria. It is awarded by the Victorian Government. The *Gambling Regulation Act 2003 (Vic) (GRA)* provides that in determining the successful bidder, the responsible Minister must be satisfied, amongst other matters, that the successful bidder has agreed to binding obligations with the Victorian Racing Industry "that are no less favourable" to the Victorian Racing Industry than those last in force under the previous licence.
- 19 The GRA prohibits the Victorian Racing Industry from bidding for the Retail Licence.
- 20 Once the Retail (TAB) Licence is awarded, the winning bidder enters into a joint venture agreement with the Victorian Racing Industry (comprised of Racing Victoria, Harness Racing Victoria and Greyhound Racing Victoria), which governs the formal relationship between the winning bidder and the Victorian Racing Industry in relation to wagering and betting operations conducted under the Retail Licence.
- 21 The bidding process for the next Retail Licence typically commences several years before the expiry of the current Retail Licence. For example, the bidding process for the 2012 Retail Licence commenced approximately four years before the beginning of the licence period.
- 22 In the bidding process for the award of the 2012 Retail Licence, Tabcorp was the successful bidder. Tatts was the only other fully compliant bidder.
- 23 The 2012 Retail Licence was awarded to Tabcorp in July 2011 for a period of twelve years, commencing from 16 August 2012, which may be extended for a further period of two years at the discretion of the responsible Minister. Following the award, Tabcorp commenced a 50/50 Joint Venture with the Victorian Racing Industry from 16 August 2012 (**Joint Venture**).
- 24 The majority of prize money awarded in thoroughbred racing in Victoria is generated from revenue under the Joint Venture between the Victorian Racing Industry and Tabcorp. Distributions from the Joint Venture are Racing Victoria's largest source of funding. In the 2015/2016 financial year, distributions from the Joint Venture constituted 48% of Racing Victoria's funding. Wagering revenue accounted for 84% of Racing Victoria's total revenue during this period.
- 25 The ability for Victorian thoroughbred racing clubs to underwrite their core business of racing with other revenue streams, such as wagering, supports the thoroughbred racing industry as a whole. Such diversified revenue streaming results in improved investment in community facilities at venues, increased employment opportunities, and reduces reliance on the Victorian State Government, especially in regional areas.
- 26 The Proposed Merger would leave very few if any other potential bidders for the next Victorian Retail License. Currently, the next Retail Licence is due to be awarded in 2024. Tabcorp and Tatts are also the only certain Australian bidders for the next Retail Licence. The Proposed Merger would therefore result in only one certain bidder for the next Retail Licence. It is also unlikely that Tabcorp would face competition from an international bidder or indeed any other bidder.
- 27 The lack of prospective domestic or international bidders for the 2024 Retail Licence is due to limitations in capability of other potential domestic or international bidders, including in relation to:
- (a) Lack of retail expertise or specific pari-mutuel expertise for corporate bookmakers. Although the holding companies of Australian corporate bookmakers (such as Ladbrokes, William Hill or Bet365) have a retail presence in the UK market, the UK business model is vastly different in that it relies on offering fixed-odds wagering and combines retail betting with gambling venues featuring electronic gaming machines. This means that corporate bookmakers have no expertise in either the Australian retail market or in pari-mutuel wagering in Australia.


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- (b) Inability to meet funding requirements, because the successful bidder for a Retail Licence would be required to expend a large, upfront capital outlay, to establish a "bricks and mortar" retail network with pari-mutuel wagering and other capability. Additionally, the cost structure of the Licence would be much higher than the current arrangements. The winning bidder would effectively have to segregate two businesses (existing online and the Retail Licence), which becomes very complicated when the existing business has Victorian residents. The temptation for the winning bidder would be to licence arbitrage and facilitate new Victorian customers into their existing Northern Territory licence so as to save money.
 - (c) Lack of Australian regulatory approval to operate in the market for potential international bidders.
 - (d) Issues related to access to vision, as there is no framework in place in which a corporate bookmaker would be guaranteed access to national racing vision. Currently, national racing vision is only available from Sky Channel, which is controlled by Tabcorp. Even if a framework were to be established, it is uncertain if it could be palatable for all parties. Sky contains advertising and ongoing logo / TM placement for TAB. Corporate bookmakers would not be keen to pay for access to the Sky vision while it shows advertisements or promotions for a competitor without them also being granted rights to advertise.
 - (e) Issues for corporate bookmakers in relation to profit sharing obligations to the Victorian Racing Industry that a successful bidder faces, in that profits from the Retail Licence may be difficult to distinguish from the successful bidder's existing revenues.
- 28 Pari-mutuel pools require volume, liquidity and stability to attract punters and to minimize risks to integrity. A standalone Victorian pool would likely require co-pooling services to be viable. Tabcorp would be the only domestic operator of a pool of significant size and liquidity.
- 29 In my opinion, it is currently unlikely that the Victorian Government will change the model of an exclusive Retail Licence to accommodate the lack of prospective bidders, due to an exclusive Retail Licence being the most efficient mechanism for the funding of the Victorian Racing Industry. Awarding multiple licences has been considered previously by at least three States, however in each case an exclusive licence was awarded.
- 30 As is referred to at length in the Application, Australia has one of the largest and most successful racing industries in the world. Victoria has the largest, or equal largest with NSW, racing industry in Australia.
- 31 The Tabcorp business utilizes a high quality product created by the clubs represented by Racing Victoria and the ability to show vision of it. Both of these things are provided by the racing clubs and they depend on having sufficient funding available to do so. The existence of a competitive market for the Retail Licence in Victoria (and, for that matter in each other State and Territory), is of critical importance in achieving sufficient revenue for the racing clubs, which are non-profit, to provide this product at a high quality level. The majority of the funding for racing in Victoria comes from Joint Venture revenue as a requirement of the Retail Licence arrangements established under the GRA. In the event that there is only one viable bidder for the Retail Licence, the amount of revenue for racing clubs the bidder is likely to offer in its bid is likely to be less than would be offered in a competitive bid against other bidders. There would be no need to make the bid attractive by offering more generous funding to the local industry, It must be remembered that directly or indirectly all of this funding is spent within the racing industry. Additionally, There are also other non-prizemoney issues that Tabcorp may negotiate heavily on if it is the sole bidder, such as its willingness to invest in the wagering business (including retail and online channels, new product development and CRM activities),
- 32 In addition the ownership by the applicant Tabcorp of Sky Racing Channel will, if the merger proceeds, increase its level of market power in relation to:
- (a) the acquisition of vision from racing clubs and the terms and conditions on which vision is made available on Sky Channel's services to venues (including the retail network in Victoria); and



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(b) competition for racing media rights and vision across media platforms and wagering service providers.

- 33 As it acknowledges in a number of places in its application, Tabcorp concedes vision drives the volume of wagering.
- 34 Although it relies on numerous statements from persons associated with the racing industry in the other States and Territories of Australia, Tabcorp has put on no evidence from any representative of the racing industry in Victoria. Racing Victoria wishes to intervene in the application to provide that evidence and to make submissions against approval of the merger and, if the merger is to proceed, as to conditions it submits should be imposed in connection with the authorization.

Affirmed by the deponent at Werribee
in the State of Victoria
on 23 March 2017


Signature of deponent

Before me: 

Signature of witness

SIMON CHRISTOPHER BARRILE
400 Epsom Road, Flemington, Vic, 3031
An Australian legal practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)