

Commerce Act 1986:

Application for Authorisation (Streamlined Process) for Restrictive Trade Practices

Pursuant to section 58 of the Commerce Act 1986

1 June 2016

MinterEllisonRuddWatts

Executive Summary

- 1.1 The New Zealand Racing Board operates the New Zealand TAB which is the country's sole licensed provider of betting on racing and sport. It intends to enter into a suite of agreements with Tabcorp Wagering Manager (Vic) Pty Ltd, TAB Limited, Tabcorp ACT Pty Ltd (the New Zealand TAB's equivalent in Victoria, New South Wales and Australian Capital Territory) and Sky Channel Pty Limited.
- 1.2 The proposed suite of agreements will govern the wagering on, and coverage rights in respect of, New Zealand and Australian racing (thoroughbreds, standardbreds and greyhounds), wagering information, racing information, commingling of betting pools (including international pools) and broadcasting rights. It will replace agreements entered into in 2007, some terms of which have been extended on a transitional basis pending the conclusion of negotiations on the new suite of agreements and this application for authorisation being made.
- 1.3 Tabcorp has, in Australia, sought and been granted an authorisation from the Australian Competition & Consumer Commission in relation to international commingling arrangements with overseas wagering operators (including the NZRB) which include restrictions on participation in commingled pools.¹ This application reflects the policy and commercial ramifications of Tabcorp's authorisation.
- 1.4 Authorisation is sought for the NZRB to enter into, and give effect to, an arrangement with Tabcorp which will provide for the commingling of NZRB and Tabcorp betting pools and will include certain provisions setting the terms for participation in those commingled pools (the Specified Provisions). The purpose and effect of these restrictions would be to limit the loss of revenues that would otherwise ultimately flow through to the New Zealand and Australian racing industries. The Specified Provisions for which authorisation is sought are set out in paragraph 1.4.10 of this application.
- 1.5 Commingling of betting pools allows the NZRB to offer a more attractive product to its customers (deeper, more liquid and stable pools and frequently bigger dividends) and to compete more effectively with corporate bookmakers who can offer a broader product range, service mix and advantageous pricing of products than those provided by the NZRB.
- 1.6 Commingling of betting pools also results in each participant in the commingled pool offering equivalent products to their respective customers. It is international commingling, coupled with the increasing availability of online betting, that has raised the prospect of competition between the NZRB and Tabcorp and has created the possibility of "revenue leakage", which could occur when customers bet on Australian racing via the NZRB (rather than through Tabcorp) and vice versa.

¹ Tabcorp Wagering Manager (Vic) Pty Ltd and TAB Limited in respect of international pooling Agreements – Authorisation A91419-A91424 – 29 October 2014.

- 1.7 Any competition between the NZRB and Tabcorp which may result from the proposed arrangement is limited and likely to only apply to “premium/VIP” customers who engage in very high volume pari-mutuel wagering.
- 1.8 The capacity for the NZRB and Tabcorp to compete in respect of other customers is limited by the fact that each is only licensed to offer wagering in its home jurisdiction and is prohibited from actively advertising in each other’s jurisdictions.
- 1.9 Rebates can influence the betting patterns of “premium/VIP” customers, and when offered to customers by a participant in a commingled pool may result in revenue leakage. The arrangement for which authorisation is sought includes rebate restraints to limit the potential for revenue leakage.
- 1.10 Streamlined authorisation is sought on the basis that:
- (a) Tabcorp has publically stated that it will not enter into international commingling agreements without imposing certain restrictions on participation in its pools as the agreements are unlikely to remain commercially viable due to the potential for revenue leakage away from the Australian racing industry. Absent a restriction on rebates, the NZRB will not be able to commingle bets into Tabcorp’s SuperTAB pool.
 - (b) The ACCC authorised similar conduct in Australia, having been satisfied that the public benefits of international commingling are substantial and outweigh any lessening of competition.
 - (c) Any lessening of competition from the relevant arrangement will be minor. It is the permission to commingle betting pools which creates a limited scope for competition between the NZRB and Tabcorp. In the absence of the proposed commingling arrangements, the NZRB and Tabcorp would not be relevantly competitive.
 - (d) Furthermore, the rebate restrictions apply only to bets transmitted by the NZRB into Tabcorp-hosted pools (and bets transmitted by Tabcorp into the NZRB-hosted pools). The rebate restrictions will not affect wagering (including rebates) offered by the NZRB on:
 - (i) New Zealand domestic racing;
 - (ii) Australian and other international racing where the bets are not commingled with Tabcorp’s SuperTAB pool; or
 - (iii) Fixed odds betting.
 - (e) In practice only a small number of “premium/VIP” customers may be affected by the rebate restrictions, being those customers who may have been rebated at levels above that permitted by the rebate restrictions. In FY15 the NZRB had [] such customers who were all based overseas.² These customers are commercially astute. Their business is highly mobile and is heavily influenced by price. It cannot be assumed (absent the rebate restraints) that the NZRB would retain the current levels of this “premium/VIP” business over the long term. The

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vast majority of the NZRB's customers will not be adversely impacted by the rebate restrictions. In fact, they will benefit greatly from the continuation of commingling.

- (f) Commingling of the NZRB's bets into the SuperTAB pool (guesting) delivers significant public benefits in the following ways:
 - (i) Quality improvement – access to deeper, more liquid pools, increased wagering stability and frequently bigger dividends for New Zealand customers betting on Australian racing.
 - (ii) Increased product variety – commingling with Tabcorp allows the NZRB to offer a much increased range of products to New Zealand customers (many more races and more bet types).
 - (iii) Avoided costs – absent authorisation the NZRB would face increased costs, reduced revenue and customer losses in circumstances where revenue from wagering is the major source of funding for the New Zealand racing industry. Increased revenues result in larger distributions to the racing codes and increased tax contributions (GST, totalisator duty, problem gambling levy) that benefit the broader community.

1.11 The NZRB's application for authorisation is supported by an independent report from NERA Economic Consulting. NERA's analysis shows that the public benefits of the proposed commingling arrangement, to the extent that they can be quantified, are significant and far outweigh the relatively limited detriment from potential reduced competition between the NZRB and Tabcorp for a limited number of "premium/VIP" customers.

Glossary

Betting Types

Win	The bettor must pick the winner of the race.
Place	The bettor must pick the runner to finish either first, second or third. Although in some smaller fields (seven runners or less), to finish first, second only.
Each way	This bet type combines a win and place on the same runner. If the bettor's runner wins, the bettor collects both the Win and Place dividend. If the bettor's runner finishes second or third, the bettor collects the Place dividend. In a field of seven or less place dividends are paid out to only first and second.
Quinella	The bettor must pick two runners to finish first and second. Quinella bets can be boxed or banker (also known as anchor).
Quaddie	The bettor selects four winners from the four nominated races.
Trifecta	The bettor must pick three runners to finish first, second and third in that order.
First4	The bettor must pick the first four runners in the correct finishing order. This is similar to Trifecta, but has an additional placing.
Double	This bet type requires the bettor to select the winners of two separate races at one meeting as nominated by the TAB. Each race is referred to as a 'leg' of the Double. Betting on Doubles close when the first leg starts. A concession is also offered on Doubles. The 'Concession Double' is paid when the bettor's selections win the first leg and come second in the other.
Treble	A Treble requires the bettor to select the winners of three separate races at one meeting as nominated by the TAB. Each race is referred to as a 'leg' of the Treble. Betting on Trebles close when the first leg starts.
Pick6	Pick6 requires the selection of the dividend bearing place getters of the last six races of a nominated meeting.
Triple Trio	The bettor must pick the first three place getters in each of the three Triple Trio nominated Legs (races). The order of the runners doesn't matter – just that they placed in the top three.

Commingling – the process where one totalisator organisation combines the sum of its betting investments on individual starters and the sum of its selected betting pools for certain events, with those investments and betting pool totals on the same event of another totalisator organisation.

Commingling processing fee – fee charged by the host totalisator to the guest totalisator for the right to commingle bets into its pool.

Direct commingling – an agreement between a host totalisator and another totalisator (guest) for the direct transmission of the guest totalisator's bets into the host totalisator's pool.

Domestic races – New Zealand thoroughbred, harness, and greyhound racing.

Equalisator betting – a form of betting in which a number of persons bet on the outcome of a race or races, and in which the sum of the contributors' bets, except for the deductions that are required to, or may, be made under the Racing Act 2003, is paid to the persons who, as a result of a ballot held after the close of betting and before the start of each race, draw the horses or greyhounds, as the case may be, that subsequently fill dividend-bearing places in that race.

Fixed odds wagering – a form of wagering where a fixed payout is made conditional on a specified outcome occurring (e.g. the All Blacks winning a rugby match against the Wallabies). Once the bet has been accepted (on the basis of the dividend offered), the payout on fixed odds betting is not affected by other bets placed. This is different to pari-mutuel (totalisator) betting where the payout depends on the amounts bet on the event by other bettors.

Gross pool pricing – the host totalisator's relevant take-out rate applies to all bets in the commingled pool.

Guest – a totalisator with a (generally) smaller pool who commingles its betting pool with the betting pool of a larger totalisator (the host).

Host – a totalisator with a large betting pool who offers commingling services to one or more other totalisators that each (generally) have a smaller pool (the guests).

Indirect commingling – an agreement where the host totalisator provides commingling services to guest totalisators where the relevant bets are transmitted via an intermediary hub.

Luxbet – a Northern Territory bookmaker managed by the Tabcorp Group.

Net pool pricing – where the host operator takes account of different take-out rates charged by different pool participants.

NZRB Betting Rules – the betting rules relevant to New Zealand made pursuant to the Racing Act 2003.

NZRB Customers –

- (a) Premium / VIP customer – a customer who uses the B2B bet placing system, Filebet, to place [] on totalisator annually. These customers are all based overseas.
- (b) Elite customer – a high staking domestic customer [].
- (c) Account customers – customers who hold a New Zealand TAB account.
- (d) Account and retail customers – customers who hold a New Zealand TAB account and who also place non account bets at TAB retail outlets.
- (e) Retail only customers – customers who place bets at retail outlets only and do not hold a New Zealand TAB account.

Offshore Bookmaker Fee – a fee proposed by the Offshore Racing and Sports Betting Working Group which would require offshore gambling operators to pay a fee whenever they:

- (a) Accept bets on New Zealand racing and sports events that take place on New Zealand soil; and/or
- (b) Accept bets originating from New Zealand.

Offshore Racing and Sports Betting Working Group (Working Group) – established by the Minister for Racing in April 2015 and tasked with considering and recommending practical options to address the issues of New Zealanders betting on racing and sports with offshore

providers, and offshore providers taking bets on New Zealand racing and sports without contributing to the local industry. The Working Group issued a Final Report in November 2015 which recommended the introduction of an Offshore Bookmaker Fee.

Pari-mutuel (or totalisator) wagering – all bets are consolidated or pooled into a totalisator pool and the final dividends that are payable are not calculated until after the close of betting on the relevant event, although approximate dividends are displayed prior to betting closing on the event. The totalisator deducts a predetermined percentage of the pool as its take-out rate or commission, and the remainder of the pool (referred to as the ‘dividend’ pool) is available for distribution to the winning punters.

Race Day Control – various functions which allow wagering to be offered on a race including:

- (a) Race close;
- (b) Results entry;
- (c) Dividend declaration;
- (d) All clear for payment of dividends;
- (e) Scratchings;
- (f) Jockey/driver changes (and other changes to racing information); and
- (g) Official changes to race start times.

Racing Betting – betting (including totalisator racing betting, equalisator betting, and fixed-odds betting) conducted by, or on behalf of, the NZRB on any race or races run at 1 or more racecourses within or outside New Zealand or both, or on any contingency arising from a sequence of any races, whether the betting takes place on or off a racecourse and within or outside New Zealand.

Racing Codes – each of New Zealand Thoroughbred Racing Incorporated, Harness Racing New Zealand Incorporated, and the New Zealand Greyhound Racing Association (Incorporated) which are the governing bodies of racing in New Zealand. The code governing bodies are responsible for the rules of racing, and for the registration of all racing participants human, equine and canine. Only those owners, trainers, jockeys, drivers, horses and greyhounds that are licensed by the relevant racing code may participate in the industry.

Seeding pools – the process by which a totalisator operator contributes its own funds to its betting pools in order to make those pools more attractive to customers.

Sports betting – fixed odds betting conducted by the NZRB which includes totalisator and fixed-odds betting on any sporting event. Both the sport event(s) and the betting can occur in or out of New Zealand, at or away from the event.

Stand-alone pool – a single betting pool operated by one totalisator.

Take-out rate – the amount a totalisator operator deducts as its predetermined commission (expressed as a percentage) from the pool of all bets.

Victorian Betting Rules – the relevant betting rules for the SuperTAB pool made pursuant to the Gambling Regulation Act 2003 (Victoria).

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Part 1 - Details of applicant and other parties

1.1 Applicant

1.1.1 This application for authorisation is made by the New Zealand Racing Board (the **NZRB**) for the benefit of all relevant parties, namely Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**), TAB Limited and Tabcorp ACT Pty Ltd (**Tabcorp ACT**) (together, **Tabcorp**).

1.1.2 Contact details for the NZRB are:

106-110 Jackson Street
Petone
Lower Hutt 5012

PO Box 38899
Wellington Mail Centre
Lower Hutt 5045

Jessica Meech, Head of Risk and Regulatory Affairs
Telephone: 04 576 6999
Email: jessica.meech@nzracingboard.co.nz

<http://www.nzracingboard.co.nz/>

1.1.3 The NZRB requests that all correspondence is sent in the first instance to:

MinterEllisonRuddWatts
Attention: Oliver Meech / Kristel McMeekin

Level 18, 125 The Terrace
Wellington
Telephone: 04 498 5095 / 09 353 9837
Email: oliver.meech@minterellison.co.nz /
kristel.mcmeekin@minterellison.co.nz

1.2 Other parties

1.2.1 The other party to the arrangement is Tabcorp Wagering Manager. For the sake of simplicity this application refers to Tabcorp. References to Tabcorp can also include references to Tabcorp Wagering Manager, TAB Limited, Tabcorp ACT and/or Tabcorp Holdings Limited as the context requires. Tabcorp's registered office is:

5 Bowen Crescent
Melbourne
Victoria 3004

Julian Hoskins, Group General Counsel
Telephone: +61 3 9868 2293
Email: julian.hoskins@tabcorp.com.au

<https://www.tabcorp.com.au/>

1.2.2 Tabcorp requests that all correspondence is sent in the first instance to:

Bell Gully
Attention: Torrin Crowther / Glenn Shewan

Level 21 Vero Centre, 48 Shortland Street
Auckland 1140
Telephone: 09 916 8621 / 09 916 8726
Email: torrin.crowther@bellgully.com / glenn.shewan@bellgully.com

1.3 Controlling entities

1.3.1 The NZRB is a statutory body established under the Racing Act 2003. It does not have any controlling persons or entities.

1.3.2 Tabcorp is an Australian public company listed on the Australian Securities Exchange (**ASX**). The ultimate parent company within the group is Tabcorp Holdings Limited.

1.4 The conduct

1.4.1 The NZRB intends to enter into a suite of agreements with Tabcorp.

1.4.2 The proposed suite of agreements will govern the wagering on, and coverage rights in respect of, New Zealand and Australian racing (thoroughbreds, standardbreds and greyhounds), wagering information, racing information, commingling of betting pools (including international pools) and broadcasting rights. They will replace agreements entered into in 2007, some terms of which have been extended on a transitional basis pending the conclusion of negotiations on the new suite of agreements and this application for authorisation being made.

1.4.3 The proposed suite of agreements comprises:

- (a) []
- (b) the NZRB Hosted Commingling Agreement (Tabcorp commingling with the NZRB, the NZRB as host);
- (c) []
- (d) []
- (e) []
- (f) Tabcorp Hosted Commingling Agreement (the NZRB commingling with Tabcorp, Tabcorp as host);
- (g) []

(h) []

(i) []

- 1.4.4 Authorisation is sought for certain provisions (the **Specified Provisions** set out in paragraph 1.4.10 below) which will form part of a proposed arrangement between the NZRB and Tabcorp. The proposed arrangement will be reflected in the NZRB-hosted and Tabcorp-hosted commingling agreements³ and will provide for the commingling of NZRB and Tabcorp betting pools. The commingling agreements will form part of the wider suite of agreements. The Specified Provisions include new restrictions on participation in the commingled pools.
- 1.4.5 Accordingly, the NZRB seeks authorisation to enter into, and give effect to, an arrangement with Tabcorp which will provide for the commingling of NZRB and Tabcorp betting pools and will include the Specified Provisions setting the terms for participation in those commingled pools.
- 1.4.6 In summary, international commingling arrangements allow:
- (a) Overseas wagering operators to transmit bets into the NZRB-hosted pools (either by transmitting bets directly to the NZRB or through intermediary hubs such as Tabcorp). As a result, the arrangements provide overseas punters with the ability to bet into the NZRB's totalisator pools.
 - (b) The NZRB to transmit bets into pools hosted by overseas wagering operators (either by transmitting bets directly to the overseas wagering operator or through intermediary hubs). As a result, the arrangements provide New Zealand punters with the ability to bet into overseas totalisator pools.
- 1.4.7 The NZRB did not seek authorisation for the commingling agreements entered into with Tabcorp in 2007. Nor is the NZRB seeking authorisation for the interim arrangements with Tabcorp described in paragraph 1.5.5 below. In respect of the 2007 agreements, the NZRB did not consider itself to be relevantly competitive with Tabcorp (or other overseas totalisators). The NZRB is authorised to provide wagering services in New Zealand. Tabcorp is not authorised to provide wagering services in New Zealand and, as a result, cannot actively advertise in New Zealand so as to target New Zealand customers. Further, neither the 2007 agreements nor the interim arrangements contain any restrictions on the parties from rebating customers.
- 1.4.8 While the NZRB has not considered itself to be relevantly competitive with Tabcorp, the NZRB acknowledges that:
- (a) Developments are occurring in relevant markets which may mean that, with the proposed commingling arrangement, competition may arise between the NZRB and overseas wagering operators; and

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- (b) The proposed commingling arrangement, together with developments in technology, may create circumstances where wagering customers (principally high net worth “premium/VIP” customers) may seek to access pools on New Zealand racing via Tabcorp and vice versa. Importantly, these opportunities only arise as a result of the commingling arrangement – it is the permission to commingle which creates the possibility of customer movement.

1.4.9 Accordingly, there is some risk that the Specified Provisions could be construed as having the purpose or effect of fixing, controlling or maintaining the price of totalisator wagering products that are offered by the NZRB and Tabcorp to their respective customers. Authorisation is sought on the basis that section 27 (via section 30) of the Commerce Act 1986 might apply to an arrangement which includes the Specified Provisions. For the reasons explained in this application, the NZRB does not consider that section 27 would apply, or might apply, to the proposed arrangement other than via section 30.

1.4.10 The Specified Provisions for which authorisation is sought are:

- (a) Betting Rules – the guest totalisator must accept, process and transmit approved bets to the host wagering operator in accordance with the host operator’s betting rules. The betting rules specify, among other things, the applicable commission / take-out rates to be charged by the totalisator on particular pari-mutuel bet types.
- (b) Revenue Leakage – in summary, to ensure that the commingling arrangements do not harm the New Zealand (and Australian) racing industry through revenue leakage from “premium/VIP” customers that engage in very high volume pari-mutuel wagering, the guest will not pay rebates (or rebates above a certain level) in respect of bets placed by Qualified Persons and transmitted to a host pool. In particular:

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- (c) Qualified Person – a “Qualified Person” definition supports the functioning of the revenue leakage requirement:
- (i) For the purposes of the NZRB Hosted Commingling Agreement a “Qualified Person” is a natural person who is a retail customer of the NZRB or any person that holds a betting account with the NZRB; and

For the purposes of the Tabcorp Hosted Commingling Agreement, a “Qualified Person” is a natural person who (a) is a retail customer of Tabcorp or any Australian totalisator licensee which is or becomes part of the Tabcorp group or (b) any person that holds a betting account with Tabcorp or any Australian totalisator licensee which is or becomes part of the Tabcorp group or (c) places a bet with any approved Australian totalisator licensee.

1.4.11 [

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- 1.4.12 Authorisation is sought for 9 years on the basis that the long-form agreements to be entered into would have an initial term of [] and be able to be extended for a further [] by written agreement between the parties.

1.5 Rationale for authorisation application

- 1.5.1 The NZRB operates New Zealand's official racing and sports betting agency, the TAB, which is the sole licensed provider of racing betting and sports betting in New Zealand. The NZRB is not licensed or authorised to operate in overseas jurisdictions, however, it does operate an online platform. Similarly, Tabcorp and other overseas wagering operators are not licensed or authorised to operate outside of their respective jurisdictions. Further, the Gambling Act 2003 (**Gambling Act**) prohibits the advertising of overseas gambling in New Zealand.⁴
- 1.5.2 Because the NZRB and overseas totalisators are only licensed to operate within their respective jurisdictions, the NZRB does not consider itself to be relevantly competitive with overseas totalisators in the supply of wagering services via traditional channels (on-course, retail and telephone).⁵
- 1.5.3 The NZRB commenced commingling with Tabcorp in 2007 which allowed for the transfer of bets placed with the NZRB into the SuperTAB pool, and bets placed with Tabcorp into the NZRB hosted pools. Tabcorp also acts as an intermediary hub for the transmission of the NZRB bets into Hong Kong pools, and the transmission of Tabcorp ACT and RWWA bets into the NZRB pools.
- 1.5.4 The proposed commingling arrangements could create circumstances where "premium/VIP" customers who engage in very high volume pari-mutuel wagering and who are offered rebates or volume discounts, may seek to access the NZRB pools via Tabcorp. Similarly, VIP customers may seek to access Tabcorp pools via the NZRB or another guest totalisator. Importantly, it is the permission to commingle betting pools under the proposed arrangement that creates the possibility of "premium/VIP" customer movement between the various pool participants.
- 1.5.5 The 2007 commingling agreements expired on 30 June 2015. However, the parties agreed to extend the term of some provisions of those agreements on a transitional basis pending the conclusion of negotiations on the new suite of agreements and this application for authorisation being made. Because not all of the provisions of the 2007 agreements have continued, the NZRB is currently only permitted to commingle 'win and place' bets into the Australian SuperTAB pool and win, place and 'quinella' bets into certain international (outside Australia) Tabcorp hosted pools (and with no constraint on rebates). Tabcorp continues to commingle the full suite of bet types into the NZRB pools (with no constraint on rebates).⁶

⁴ Gambling Act 2003, section 16.

⁵ In Australia, the ACCC has relevantly observed that, "*in each state and territory only a single TAB operator is licensed to provide totalisator and fixed odds wagering through retail outlets and this has resulted in limited competition between TAB operators in different states*" (Tabcorp Wagering Manager (Vic) Pty Ltd and TAB Limited in respect of international pooling Agreements – Authorisation A91419-A91424 – 29 October 2014 at 62).

⁶ [

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- 1.5.6 In negotiating new commingling agreements, Tabcorp's position has been that the purpose of international commingling is to bring new punters to its pools. Accordingly, Tabcorp will no longer commingle with the NZRB (or other wagering operators) where the agreements could allow the NZRB to target existing Tabcorp customers to wager into Tabcorp's pools via the NZRB (instead of via Tabcorp). Tabcorp's position reflects the view of the Australian racing industry that it will only support international commingling where it does not potentially result in revenue being diverted away from Australian racing to overseas wagering operators.
- 1.5.7 To address this revenue leakage issue, Tabcorp has introduced new conditions for participation by overseas wagering operators in its pools. Tabcorp sought and obtained authorisation from the Australian Competition and Consumer Commission (**ACCC**) for its international commingling arrangements, including the new conditions.⁷ A summary of the ACCC's determination is included as **Annexure 1**. The ACCC concluded that the public benefits likely to arise from international commingling outweigh the limited anti-competitive detriments including reduced ability for overseas wagering operators to compete with Tabcorp in the supply of wagering on racing in certain circumstances (i.e. the restrictions only apply to bets which are transmitted to Tabcorp pools and have no impact on stand-alone pools or fixed odds wagering).
- 1.5.8 As stated in Tabcorp's submission to the ACCC supporting its authorisation application for international commingling arrangements:⁸

...where overseas wagering operators offer wagering on Australian races through pooling arrangements there is some risk that Tabcorp customers might bet into Australian pools through an overseas wagering operator. The risk principally arises in respect of a small number of large premium customers who might be offered incentives to move their betting to another operator. While small in number, these customers are large punters and may generate significant revenue for Tabcorp and the local racing industry....

Consequently, the Australian racing industry bodies require that pooling does not result in 'leakage' of betting to foreign jurisdictions to the detriment of the local racing industry....As a result, the racing industry will only continue to support international pooling where pooling results in new betting on Australian racing, rather than a transfer of existing betting on Australian racing from Tabcorp to overseas wagering operators.

- 1.5.9 This application reflects the policy and commercial ramifications of Tabcorp's authorisation. Given the introduction of new conditions for participation in commingled pools and the importance of international commingling to the

⁷ Tabcorp Wagering Manager (Vic) Pty Ltd and TAB Limited in respect of international pooling Agreements – Authorisation A91419- A91424 – 29 October 2014. The ACCC has authorised a number of domestic and international commingling Agreements. See Tabcorp Wagering Manager (Vic) Pty Ltd & Ors – Authorisations A91454 – A91459, 12 February 2015 < <http://registers.accc.gov.au/content/index.phtml/itemId/1181689/fromItemId/401858>>; Tabcorp Wagering Manager (Vic) Pty Ltd & TAB Limited – Authorisations A91419 - A91424, 29 October 2014 < <http://registers.accc.gov.au/content/index.phtml/itemId/1178280/fromItemId/278039>>; Tabcorp Wagering Manager (Vic) Pty Ltd – Authorisation A91323 - A91328, 10 December 2012 <<http://registers.accc.gov.au/content/index.phtml/itemId/1065681/fromItemId/401858>>.

⁸ Tabcorp, Submission to the Australian Competition and Consumer Commission, Applications for authorisation of International Pooling Arrangements, 7 May 2014, at 14.

NZRB, New Zealand punters and the New Zealand racing industry, the NZRB considers it appropriate to seek authorisation.

Revenue Leakage

- 1.5.10 The Specified Provisions include a restriction on rebates. The purpose of this restriction is to prevent 'guest' pool participants from using rebates as a mechanism to encourage VIP customers from entering the host pool via a guest totalisator rather than via the host totalisator. This reflects the fact that the purpose of commingling is to bring new customers to the host's pool (i.e. the customers of other participating totalisators) and not to create circumstances where guest pool participants can target the host's existing customers to bet into the host's pool via the guest rather than directly with the host.
- 1.5.11 There is no attempt or ability to limit rebates or concessions in respect of other bets or bet types, including:
- (a) Wagering offered by the NZRB on New Zealand domestic racing;
 - (b) Wagering offered by the NZRB on Australian and other international racing where the bets are not commingled with Tabcorp's SuperTAB pools; or
 - (c) Fixed odds betting.

Betting Rules

- 1.5.12 The Specified Provisions include a requirement that the host betting rules apply. The relevant betting rules for New Zealand are the NZRB Betting Rules made pursuant to the Racing Act 2003 (**Racing Act**). The relevant betting rules for the SuperTAB pool are the Victorian Betting Rules.
- 1.5.13 The NZRB Betting Rules (and the Victorian Betting Rules) specify the applicable deduction (take-out rate) for each bet type.
- 1.5.14 The NZRB and Tabcorp commingled pools are operated on a 'gross pool basis'. This works as follows:
- (a) Each of the participating TABs conducts its own pari-mutuel wagering business during the course of which it supplies commingled wagering products (i.e. it accepts bets to be transmitted into commingled pools);
 - (b) The funds collected in respect of commingled wagering products are then pooled by each participating TAB;
 - (c) The individual pools of each participating TAB are then notionally commingled into the host pool. In practice the host pool is divided into separate pools for each particular bet type on each nominated event;
 - (d) The take-out rate (specified in the host betting rules) is then notionally deducted from the host pool and credited to the pool participants (in proportion to the total wagers placed with that participant);
 - (e) Cash settlements are made between the host and guest participants in circumstances where the amount required to be paid by a participant to punters in the form of dividends does not equal the amount wagered by punters with that participant. Cash settlements take place monthly in arrears; and

- (f) The host invoices each guest participant for the commingling processing fee.
- 1.5.15 The application of the NZRB Betting Rules is central to the operation of the NZRB pools which operate on a gross pool pricing basis as described above.
- 1.5.16 Where the NZRB acts as host, bets placed with other pool participants are commingled into the NZRB pool. The applicable take-out rate is then removed from the top of the pools of each participating totalisator and the winning dividends are calculated. This means that the NZRB customers and the customers of each pool participant will receive the same dividends and see the same approximate dividends (the latter being the dividends which are visible to customers until a race closes).
- 1.5.17 The NZRB and Tabcorp do not operate net pool pricing (i.e. where the host operator takes account of different take-out rates charged by different pool participants) and substantial software development would be required to facilitate net pool pricing. In addition, a move to net pool pricing would make it extremely difficult to display up to date and accurate dividend information to customers.

Part 2 - The industry

2.1 The parties

The NZRB

- 2.1.1 The NZRB is a statutory body established under the Racing Act. Its members are appointed by the Minister for Racing. Its primary purpose under the Racing Act is to promote the racing industry, facilitate and promote racing betting and sports betting and to maximise its profits for the long term benefits of New Zealand racing.⁹
- 2.1.2 The NZRB operates the New Zealand TAB which is the country's sole provider of betting on racing and sport.
- 2.1.3 A detailed summary of the NZRB's operations is included in **Annexure 2**.

Tabcorp

- 2.1.4 Tabcorp Holdings operates through its subsidiaries and controlled entities, including Tabcorp Wagering Manager and TAB Limited (together the **Tabcorp Group**). The Tabcorp Group is a wagering, gaming and entertainment business whose operations are organised into four main business units including Wagering, Media and International, Gaming and Keno.
- 2.1.5 The Tabcorp Group is one of the three major wagering operators in Australia with a licence to operate totalisator pools. The Tabcorp Group holds totalisator licenses in Victoria, New South Wales (**NSW**) and Australian Capital Territory (**ACT**).¹⁰ It offers totalisator and fixed odds betting on racing and sporting events.
- 2.1.6 A detailed summary of Tabcorp's operations is included in **Annexure 3**.

2.2 Industry overview

Pari-mutuel (or totalisator) wagering

- 2.2.1 In pari-mutuel wagering all bets are consolidated or pooled into a totalisator pool and the final dividends that are payable are not calculated until after the close of betting on the relevant event, although approximate dividends are displayed prior to betting closing on the event. The totalisator operator deducts a predetermined percentage of the pool as its take-out rate or commission (on which tax and other deductions are made).¹¹

⁹ Racing Act 2003, section 8.

¹⁰ In 2004, Tabcorp acquired TAB Limited, the New South Wales based wagering, media and gaming company. In 2014, Tabcorp acquired the ACT TAB. The other major wagering operator in Australia is the Tatts Group (through ownership of UniTAB – now UTAB which operates in Queensland, South Australia, Northern Territory and Tasmania). In Western Australia the TAB is operated by Racing and Wagering Western Australia (**RWWA**), a government-owned organisation.

¹¹ The take-out rates for different bet types are set out in NZRB Betting Rules (pursuant to the Racing Act) and range from 15.5%-32.5%.

- 2.2.2 The remainder of the totalisator pool is referred to as the 'dividend' pool and is available for distribution to the winning punters. To calculate the dividends payable to successful punters, the dividend pool is divided by the number of units bet on the successful outcome. Pari-mutuel wagering encompasses many different bet types, but the key feature is that customers are betting against each other rather than against the totalisator.
- 2.2.3 **Confidential Annexure 4** gives a stylised example to explain how a totalisator works.
- 2.2.4 The below table shows the different pari-mutuel bet types offered by the NZRB on New Zealand races and the NZRB's take-out rate for each bet type.¹²

Table 1 – NZRB Bet Types

DOMESTIC NZ RACES - ALL CODES	
BET TYPE	NZRB TOR
Win	15.50%
Place	15.50%
Quinella	21.00%
Trifecta	25.00%
First4	25.00%
Double	25.00%
Double with concession	25.00%
Treble	25.00%
Quaddie	26.00%
Pick 6	27.00%
Pick 6 with concession	26.00%
Place 6	27.00%
Triple Trio with concession	28.00%
Pick the Score	25.00%
Pools	32.50%
Pools with concession	32.50%

Commingling

- 2.2.5 Commingled pools are an expansion of pari-mutuel wagering. Instead of bets being placed into a single totalisator's pool, commingling enables totalisators to combine their respective pools to provide a single, larger pool into which the customers of each participating totalisator can wager.
- 2.2.6 Commingling is commonplace around the world and occurs both intra-country and between countries.¹³

¹² Take-out rates are set out in the NZRB Betting Rules.

¹³ Examples of countries that commingle betting pools include the UK, France, Norway, Ireland, South Africa and Italy.

2.2.7 The Racing Act authorises the NZRB to *amalgamate the amount available for an event or events for which racing or sports betting is authorised under this Act with amounts available from overseas betting systems to form a combined dividend pool.*¹⁴

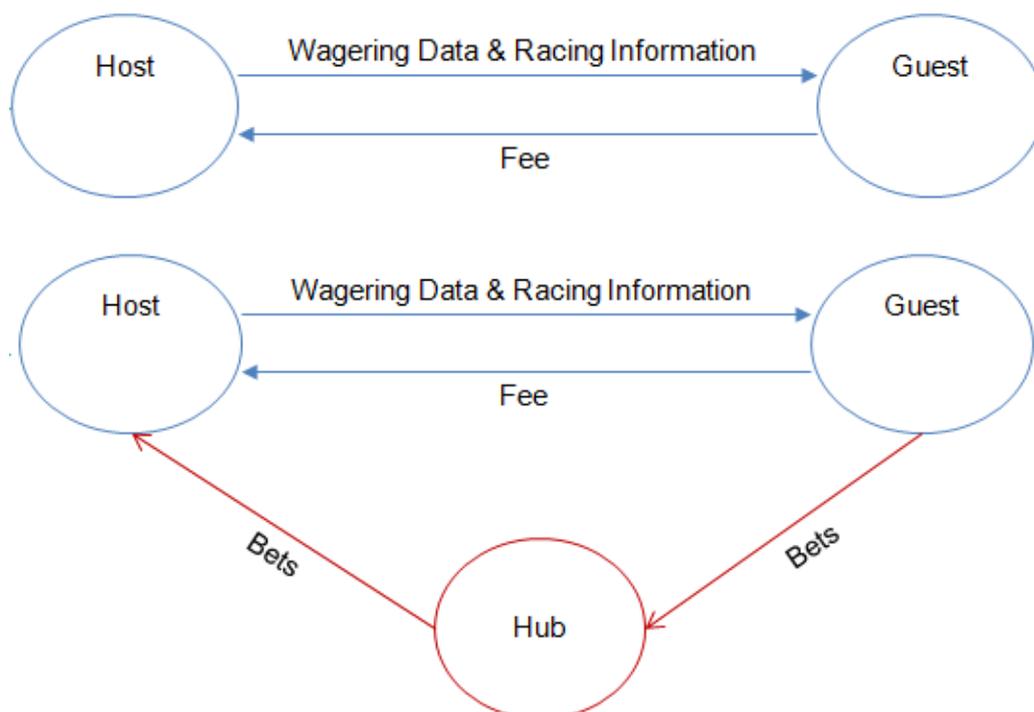
2.2.8 The NZRB Betting Rules define commingling as:¹⁵

the process where one totalisator organisation combines the sum of its betting investments on individual starters and the sum of its selected betting pools for certain events, with those investments and betting pool totals on the same event of another totalisator organisation.

2.2.9 Commingling agreements typically involve a totalisator having a large pool (the 'host') offering commingling services to one or more other totalisators that each have a smaller pool (the 'guest'). In practice, the provision of commingling services means the provision by the host of the right for the guest to participate in the larger pool in return for a fee.

2.2.10 Commingling agreements can be direct or indirect. Direct commingling involves an agreement with another wagering operator for the direct transmission of bets into their pool. Indirect commingling involves the host totalisator providing commingling services to guest totalisators where the bets are transmitted via an intermediary hub.

Table 2



2.2.11 Commingled pools give rise to a wide range of benefits for wagering operators, punters, the racing industry and the wider economy.

¹⁴ Racing Act 2003, section 62.

¹⁵ NZRB Betting Rules, Rule 10.10.1

Benefits of commingling for customers

2.2.12 Commingling benefits customers by:

- (a) Providing access to potentially larger dividends as a result of there being a larger pool to distribute to winning punters. Dividends are a function of the size of the pool as well as the number of units bet in the pool;
- (b) Reducing the volatility of dividends. In larger commingled pools, large bets have less effect on the odds and final dividends. This benefits customers placing larger bets (providing the ability to place larger bets without impacting the odds) and customers placing smaller bets (whose bets might otherwise be disturbed by the larger bets); and
- (c) Providing the opportunity to bet on international races that punters might not otherwise have had access to (i.e. offering a standalone pool may not be commercially viable due to the small number of New Zealand punters who would want to wager on those races).

Benefits of commingling for totalisators

2.2.13 For guest totalisators, commingling provides:

- (a) Access to a larger totalisator pool or a pool (and bet types) which it would not otherwise offer; and
- (b) Opportunities to expand and enhance its product offering to customers and increase its revenue stream.

2.2.14 For host totalisators, commingling provides:

- (a) The opportunity to earn additional revenue through commingling fees; and
- (b) In the case of international commingling, the opportunity to export its domestic racing product and to enhance its own pool liquidity.

Fixed odds wagering

2.2.15 In fixed odds betting a fixed pay-out is made conditional on a specified outcome occurring (e.g. the All Blacks winning a rugby match against the Wallabies). Once the bet has been accepted (on the basis of the dividend offered), the payout on fixed odds betting is not affected by other bets placed. This is different to pari-mutuel betting where the payout depends on the number of units that are on each runner.

2.2.16 In fixed odds betting, the wagering operator bears the risk and their revenue will depend on the outcome of the event. Even with a built in profit margin, the margin on fixed odds wagering is lower than pari-mutuel wagering.

2.3 Industry trends

Overview

- 2.3.1 The decline in domestic tote (the NZRB's core business), a shift in customer preference away from traditional wagering channels (e.g. retail and on-course) and an increase in New Zealanders wagering online with offshore corporate bookmakers are having a significant impact on the NZRB's business model as described in detail below.
- 2.3.2 In this rapidly changing environment it is more important than ever that the NZRB can offer its customers an attractive product range (i.e. a wide range of Australian and international races on which to wager and access to deeper, more liquid Tabcorp hosted pools).

Decline in domestic tote

- 2.3.3 The NZRB has traditionally derived the majority of its revenue from high margin pari-mutuel wagering (tote products). However, the industry is seeing a decline in demand for tote products, in favour of (lower margin) fixed odds products, both in racing betting and in sports betting:
- (a) Racing fixed odds betting currently represents 27% of all racing betting, compared to 7% in 2010.
 - (b) Sports betting, while still a smaller portion of the NZRB's revenue also continues to grow. Sports betting currently represents 17% of the NZRB's turnover, compared to 13% in 2010.
- 2.3.4 The NZRB is experiencing a decline in domestic tote (totalisator betting on domestic races) because New Zealand customers are increasingly interested in betting on Australian and overseas races. The decline in core totalisator betting on domestic racing has been offset by revenue from increased gambling on imported races (especially Australian) and revenues from exporting New Zealand races to foreign markets (especially Australia). In 2013/14 import racing tote exceeded domestic tote for the first time.
- 2.3.5 The graph below shows annual gross betting revenue comparing domestic totalisator and commingling with Tabcorp.

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- 2.3.6 Further graphs showing trends in the NZRB's gross betting revenue are attached as **Confidential Annexure 5**. Overall these show the NZRB's gross betting revenues¹⁶ growing steadily, with overall totalisator revenues flat to slightly declining and increases in fixed odds betting. Racing revenues have held steady, with some small growth in the sports betting offering. Domestic totalisator revenues have been decreasing, with overall totalisator revenues sustained by betting on Tabcorp hosted racing.
- 2.3.7 The scale of Australian racing means that New Zealanders bet on Australian races more frequently than Australians bet on New Zealand races.¹⁷ The Australian thoroughbred racing industry is second largest internationally with 371 race clubs, 356 race tracks and 18,949 races in the 2014/2015 year.¹⁸
- 2.3.8 Fixed odds wagering on racing and sports betting has experienced consistent growth over the last five years. While pari-mutuel wagering on racing continues

¹⁶ The NZRB measures Gross Betting Revenue or "GBR" (bets placed (turnover) less dividends (wins paid out)), Net Betting Revenue or "NBR" (gross betting revenue less taxes, levies and rebates), and profit contribution (net betting revenue less Turnover Related Expenses or "TRE", being commingling fees, national sporting organisation grants, outlet and agency fees etc.)

¹⁷ Australian racing currently represents close to 50% of NZRB's racing turnover while wagering on New Zealand racing represented less than 3% of Australian racing turnover.

¹⁸ Racing Australia, *A Guide to the Racing Industry in Australia 2014-2015* (January 2016) <<http://www.racingaustralia.horse/Aboutus/FactBook.aspx>> at 8.

to be the NZRB's largest source of revenue, as the below graph shows, the trend in wagering activity is shifting towards increased fixed odds betting.

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Shift away from traditional wagering channels

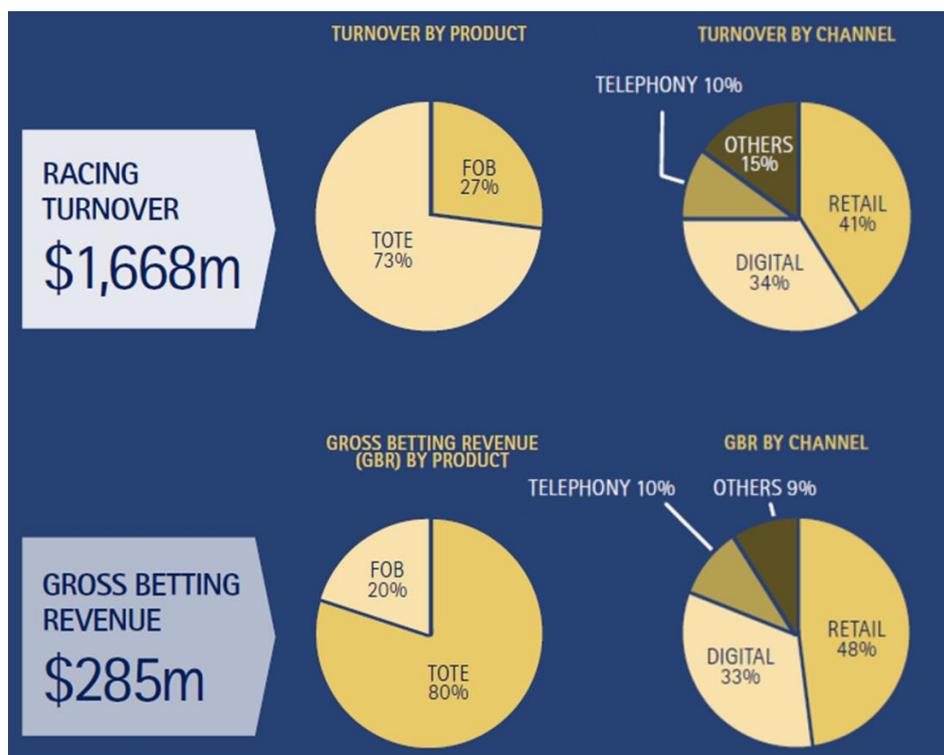
2.3.9 The NZRB offers wagering through a range of betting channels including cash channels (e.g. retail and on-course), telephony and online. Online racing and sports betting is an area of significant growth which has seen a shift from traditional betting channels (such as retail or TAB outlets, on-course bookmakers and with bookmakers over the phone) to online channels (including mobile and tablet). New Zealand punters are increasingly looking to digital platforms for racing and sports betting. This is reflected in a decline in attendance at race events (down 7.5%) and a decline in on-course turnover (down 12%). Customers on-course are increasingly using digital betting. The digital share of total NZRB betting turnover has increased from 22% in 2010 to 52% currently.¹⁹ The growth in digital turnover (online and mobile) for on-account customers is even greater, with digital turnover now accounting for 85% of account betting activity. The TAB Mobile App is the fastest growing channel with turnover growth of 210% between the first and second half of 2014/2015.

2.3.10 The composition of the NZRB's business continues to change led by a shift in customer preferences towards digital channels, and the ongoing digitisation of the industry. The digital channel currently represents 34% of the NZRB's total racing turnover (approximately \$567.12 million) and 33% of gross betting revenue for racing (approximately \$94 million). The graphs below illustrate the NZRB's racing turnover and gross betting revenue by channel:²⁰

¹⁹ New Zealand Racing Board Annual Report 2015, at 6.

²⁰ New Zealand Racing Board Annual Report 2015, at 14.

Table 5 – Racing and betting turnover by channel



New Zealanders increasingly wagering with offshore operators

2.3.11 While it is illegal to promote overseas gambling in New Zealand,²¹ New Zealanders are not prohibited from gambling online with overseas providers who operate outside of New Zealand's regulatory framework. The number of New Zealanders betting offshore has grown from around 23,000 in 2010 to around 40,000 today. It is estimated that within five years around 80,000 New Zealanders may bet offshore, representing more than half of all New Zealand TAB customers.²² New Zealanders are estimated to wager \$518 million per year on sports betting and racing betting with offshore providers.²³

2.3.12 The increase in New Zealanders betting online with offshore corporate bookmakers and the consequent 'leakage' of revenue from New Zealand is a major concern for the NZRB and the racing industry. The NZRB estimates that offshore 'leakage' is potentially costing \$35 million in gambling profits annually.²⁴ Offshore operators can take bets from New Zealanders and on New Zealand sport without contributing to local industries. These operators access the New Zealand market without bearing the responsibilities of the NZRB including paying New Zealand taxes and levies and meeting the country's

²¹ Gambling Act 2003, section 16.

²² Offshore Racing & Sports Betting Working Group, *Final Report* (24 November 2015) <<https://nzcrcingboard.co.nz/other--reports>> at 42.

²³ Ibid.

²⁴ NZRB Statement of Intent 2015-2017, at 8.

responsible gambling standards. In addition, they do not distribute profits to the New Zealand racing industry and sports organisations.

- 2.3.13 There were 466 bookmakers licensed in the Australian jurisdiction in 2014-2015.²⁵ A large number of online sports betting providers in Australia are also based in the Northern Territory (**NT**). NT now has at least twelve sports bookmakers allowed to trade 24/7.

Table 6 - NT licensed bookmakers (operating 24/7) and/or the internet²⁶

Bet365	NT TAB
Betchoice / Unibet	Sportsbetting.com.au
Centrebet	Sportsbet
Club All Sports	Sportingbet
CrownBet	Tom Waterhouse NT Pty Ltd
Luxbet	Weather Lottery

- 2.3.14 In April 2015 the Minister for Racing announced the establishment of the Offshore Racing and Sports Betting Working Group (**Working Group**). The Working Group has been tasked with considering and recommending practical options to address the issues of New Zealanders betting on racing and sports with offshore providers and offshore providers taking bets on New Zealand racing and sports without contributing to the local industry.
- 2.3.15 The Final Report of the Working Group was released on 24 November 2015. In summary, the report recommends amendments to the Racing Act 2003 to increase the range of betting products that can be offered by the New Zealand TAB, as well as the introduction of an Offshore Bookmaker Fee through legislation. The Offshore Bookmaker Fee would require offshore gambling operators to pay a fee whenever they:
- (a) Accept bets on New Zealand racing and sports events that take place on New Zealand soil; and/or
 - (b) Accept bets originating from New Zealand.

²⁵ Racing Australia, *A Guide to the Racing Industry in Australia 2014-2015* (January 2016) <<http://www.racingaustralia.horse/Aboutus/FactBook.aspx>> at 8.

²⁶ Australasian Gaming Council, "Chapter One: Australia's Gambling Environment", *A Guide to Australasia's Gambling Industries 2014/2015* <https://www.austgamingcouncil.org.au/system/files/AGCPublications/AGC_DB_CHP1_R0815.pdf> at 20.

Part 3 - Market definition

3.1 Relevant markets

- 3.1.1 It is unlikely to be necessary to reach a final conclusion on the precise market definition for the purposes of this application because regardless of the market definition which is adopted, the proposed arrangements, including the Specified Provisions would result in significant public benefits and minimal anti-competitive detriment.
- 3.1.2 The NZRB submits that the narrowest market definition available for the purposes of assessing the anti-competitive detriments resulting from the proposed practices is a national market for the supply of pari-mutuel wagering on racing.

3.2 Product dimension

- 3.2.1 Wagering is one of a range of gambling products available to customers, including gaming machines, casinos and lotteries. To some extent, all of these gambling opportunities compete with each other for the customer's discretionary dollars. It is arguable, therefore, that the relevant product dimension includes both gaming and wagering products.
- 3.2.2 The ACCC has considered wagering markets on a number of occasions. Relevantly:
- (a) In 2009, the ACCC considered that *"it was not necessary for it to conclude whether the traditional product markets for pari-mutuel betting by state totalisators on racing, fixed odds betting by state totalisators/bookmakers on racing, and fixed odds betting by state totalisators and bookmakers on sporting events have converged."*²⁷
 - (b) However, the ACCC has observed that *"developments in the industry may suggest that the markets for traditional wagering products are, to a degree, converging with an increased number of consumers now considering pari-mutuel and fixed odd wagering to be in competition with each other."* The ACCC also noted that *"the increase in consumer demand for online wagering services may also suggest that, for some consumers, retail and online services are increasingly substitutable."*²⁸
 - (c) In 2012, the ACCC observed that *"an increasing number of wagering service providers now offer fixed odds and pari-mutuel odds (or 'best of tote' odds) to punters side by side, to the effect that many punters now*

²⁷ ACCC Final Determination, Tabcorp Manager Pty Ltd - Authorisations A91127 - A91132 & A91162 - A91165, 9 September 2009 at 4.30, cited in ACCC Final Determination, Tabcorp Wagering Manager (Vic) Pty Ltd - Authorisations A91323 - A91328, 10 December 2012 at 70.

²⁸ ACCC Final Determination, Tabcorp Wagering Manager (Vic) Pty Ltd - Authorisations A91323 - A91328, 10 December 2012 at 71.

*consider pari-mutuel wagering and fixed odds wagering offers to be substitutable.*²⁹

- 3.2.3 The NZRB agrees that traditional product markets for wagering have converged and pari-mutuel and fixed odds wagering on racing are increasingly substitutable. However, given the approach of the NZCC that *“if competition concerns are not identified within the narrowly defined market they are unlikely to arise in a broadly defined market”*,³⁰ the NZRB submits that the most narrow plausible product market is pari-mutuel wagering on racing.

3.3 Functional dimension

- 3.3.1 The NZRB, through its operation of the New Zealand TAB, supplies racing betting and sports betting to punters. Accordingly, the appropriate functional level of the market is the retail supply of wagering on racing to customers.

3.4 Geographic dimension

- 3.4.1 The New Zealand TAB is the sole provider of racing betting and sports betting in New Zealand. It supplies and advertises wagering on racing and sports throughout the country. Accordingly, the geographic scope of the market is national.

- 3.4.2 We note that on a number of previous occasions, the ACCC has considered national wagering markets.³¹ It has relevantly observed that:³²

There has also been an increase in demand for telephone and online wagering services which suggests that national or jurisdictional boundaries are breaking down and there is movement towards an international market.

²⁹ ACCC Final Determination, Racing and Wagering Western Australia - Authorisations A91342 & A91343, 17 April 2013 at 51.

³⁰ Reckitt Benckiser PLC and Boots Healthcare International Limited, Decision 567, 30 November 2005, at 44.

³¹ ACCC Final Determination, Tabcorp Wagering Manager (Vic) Pty Ltd & TAB Limited - Authorisations A91419 - A91424, 29 October 2014; ACCC Final Determination, Racing and Wagering Western Australia - Authorisations A91342 & A91343, 17 April 2013; ACCC Final Determination, Tabcorp Wagering Manager (Vic) Pty Ltd - Authorisations A91344 - A91346, 17 April 2013; ACCC Informal Review, Tabcorp Holdings Limited - proposed acquisition of TOTE Tasmania Pty Ltd, 38288, 18th August 2009; ACCC Informal Review, UNiTAB - proposed acquisition of TOTE Tasmania Pty Ltd, 38144, 18th August 2009.

³² ACCC Final Determination, Tabcorp Wagering Manager (Vic) Pty Ltd & TAB Limited - Authorisations A91419 - A91424, 29 October 2014 at 65.

Part 4 - Counterfactual

4.1 The counterfactual is no commingling of the NZRB's bets into the SuperTAB pool

4.1.1 Tabcorp's publicly stated position is that it will not allow overseas wagering operators to participate in its pools without imposing certain conditions of access. In its submission supporting its application to the ACCC for authorisation of international pooling arrangements, Tabcorp stated that each of these conditions of access are necessary for the supply of pooling services to overseas wagering operators and Tabcorp would not provide pooling services in the absence of these conditions.³³

Tabcorp would not enter, or obtain the necessary approvals to enter, International Pooling Arrangements which did not contain the provisions discussed above. In this respect, if the International Pooling Agreements are not authorised, overseas wagering operators will not participate in the TAB or SuperTAB pools and Tabcorp may not be able to participate in overseas pools. Tabcorp would not be in a position to continue pooling which would have significant consequences for its customers and the racing industry. In particular, the export of Australian racing would be curtailed (Tabcorp is the only wagering market participant taking Australian racing vision to the world), customers would have a more limited choice of products on which to bet and the racing industry would receive lower returns and lose an important source of funding.

4.1.2 The ACCC accepted that without the provisions for which authorisation was sought and granted, "Tabcorp is unlikely to enter into pooling Agreements in the form proposed with overseas wagering operators as the Agreements are unlikely to be commercially viable."³⁴

4.1.3 Absent the Specified Provisions, Tabcorp would not permit the NZRB to commingle with it (i.e. the parties would not enter into the Tabcorp Hosted Commingling Agreement).

4.1.4 The relevant counterfactual is, therefore, no guesting by the NZRB into Tabcorp's SuperTAB pool.

4.1.5 As Tabcorp turnovers currently make up around [] of the NZRB's hosted pools, [

].³⁵

³³ Tabcorp, Submission to the Australian Competition and Consumer Commission, Applications for authorisation of International Pooling Arrangements, 7 May 2014, at 27-28.

³⁴ ACCC Final Determination, Tabcorp Wagering Manager (Vic) Pty Ltd & TAB Limited - Authorisations A91419 - A91424, 29 October 2014 at 70.

³⁵ [

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4.2 What the NZRB would do in the counterfactual

4.2.1 In the event that the Specified Provisions were not authorised, the NZRB would need to take a number of steps to be able to offer its customers an alternative Australian racing product offering (i.e. stand-alone NZRB totalisator pools on Australian racing).

4.2.2 **Confidential Annexure 6** contains a detailed description of these steps.

4.2.3 In summary, absent authorisation:

(a) The NZRB would need to [

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(b) [

]

(c) [

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Part 5 - Existing competitors

5.1 Totalisator Agency Boards

New Zealand

- 5.1.1 The NZRB, through its operation of the New Zealand TAB, is the sole licensed provider of racing betting and sports betting in New Zealand. It is not licensed or authorised to operate outside of New Zealand, however, it does operate an online platform.

Australia and overseas

- 5.1.2 Overseas wagering operators (including Tabcorp) are not able to be licensed or authorised to provide wagering services in New Zealand and cannot actively advertise in New Zealand.³⁶
- 5.1.3 In Australia each state or territory has licensed or otherwise authorised one totalisator to provide off-course pari-mutuel wagering in their respective state or territory. The currently licensed or authorised totalisators in each state and territory are:

Table 7 – Australian totalisators

State / Territory	Licensed or authorised operator
New South Wales	Tab Limited – a wholly owned subsidiary of Tabcorp Holdings Ltd
Victoria	Tabcorp Holdings Ltd
Queensland	UNiTAB Ltd – a listed company that is part of the Tatts Group Ltd
Western Australia	RWWA
South Australia	SATAB Pty Ltd – a wholly owned subsidiary of UNiTAB Ltd
Tasmania	TOTE Tasmania Pty Ltd – a wholly owned subsidiary of the Tatts Group Ltd
Australian Capital Territory	ACTTAB Pty Ltd – a wholly owned subsidiary of Tabcorp Holdings Ltd
Northern Territory	NTTAB Pty Ltd – a wholly owned subsidiary of UNiTAB Ltd

- 5.1.4 Three major totalisator pools operate in Australia as a result of domestic commingling arrangements. Overseas wagering operators also participate in these pools. The NZRB currently participates in the SuperTab pool as a result of its commingling arrangements with Tabcorp.³⁷

³⁶ Gambling Act 2003, section 16.

³⁷ [

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Table 8 – Australian totalisator pools

Pool	Operator	Jurisdictions
NSW	Tabcorp	New South Wales Pools with Premier Gateway International internationally
SuperTab	Tabcorp	Victoria Western Australia Australian Capital Territory Other international (New Zealand, South Africa)
Tatts	Tatts Group Ltd	Queensland South Australia Northern Territory Tasmania

5.2 Corporate bookmakers

New Zealand

- 5.2.1 New Zealand does not have any registered or licensed corporate bookmakers. Offshore corporate bookmakers offer wagering services to New Zealand punters over the Internet and are a material competitive consideration for the NZRB, as the Working Group's Final Report highlights.
- 5.2.2 The New Zealand TAB faces increasing online competition from large offshore corporate bookmakers that operate outside of New Zealand's regulatory framework. Many thousands of New Zealanders now bet online using offshore websites, rather than through the channels provided on-course, off-course, or online via the New Zealand TAB website.³⁸ Betting turnover by New Zealanders with offshore gambling operators is estimated to be \$518 million a year.³⁹
- 5.2.3 Offshore gambling operators offer a broad range of products to customers including lotteries, card games, simulated poker machines and table games, and fantasy sports games in addition to betting on sport and racing events. New Zealand customers can access a broader product range, service mix, and more advantageous pricing of products than those provided by the TAB. There are many internet-based operators globally, but a smaller number of Australian licensees attract most of the offshore bets placed by New Zealanders.⁴⁰

³⁸ Offshore Racing & Sports Betting Working Group, *Final Report* (24 November 2015) <<https://nzcrcingboard.co.nz/other--reports>> at 4.

³⁹ Offshore Racing & Sports Betting Working Group, *Final Report* (24 November 2015) <<https://nzcrcingboard.co.nz/other--reports>> at 6.

⁴⁰ Offshore Racing & Sports Betting Working Group, *Final Report* (24 November 2015) <<https://nzcrcingboard.co.nz/other--reports>> at 10.

Australia

5.2.4 Corporate bookmakers licensed in Australia include:

Table 9 – Australian corporate bookmakers

Licensed Bookmaker	Leading Brands
Bet 365 Group Ltd	bet365
Bet HQ Pty Ltd	BetHQ.com.au
betting.club Pty Ltd	betting.club
Bluebet Pty Ltd	Bluebet
ClassicBet Pty Ltd	ClassicBet
Crown Resorts & Matthew Tripp	Betfair Australia CrownBet
Ladbrokes plc	Betstar Bookmaker Ladbrokes
Merlehan Bookmaking Pty Ltd	TopSport
Paddy Power plc	Sportsbet
Palmer Bookmaking Pty Ltd	Palmerbet
Plus Connect (NT) Pty Ltd	Weather Lottery
Sportsbetting.com.au Pty Ltd	Sportsbetting.com.au
Tabcorp Holdings Ltd	Luxbet TAB Sportsbet
TopBetta Pty Ltd	TopBetta
Unibet Group plc	Unibet
William Hill Australia Wagering Pty Ltd	Centrebet Tom Waterhouse William Hill

Part 6 - Potential competition

6.1 Offshore corporate bookmakers

- 6.1.1 As discussed in detail in Part 2 of this application, the increasing presence of offshore corporate bookmakers, and how to respond to that, are material competitive considerations for the New Zealand TAB.⁴¹
- 6.1.2 To address the issue of revenue leakage to offshore corporate bookmakers and away from New Zealand, the Working Group has recommended the introduction of several measures including an Offshore Bookmaker Fee to be levied on offshore gambling operators whenever they:
- (a) Accept bets on New Zealand racing and sports events that take place on New Zealand soil; and/or
 - (b) Accept bets originating from New Zealand.
- 6.1.3 A continuing and strong competitive constraint from offshore corporate bookmakers is the most likely source of potential competition under the current regulatory framework. Competition from these players is not affected by the proposed commingling agreements.

⁴¹ In Australia, the ACCC has previously acknowledged that corporate bookmakers are a substantial competitive constraint on Tabcorp (ACCC Final Determination, Tabcorp Wagering Manager (Vic) Pty Ltd - Authorisations A91323 - A91328, 10 December 2012 at 138).

Part 7 - Public benefits and detriments

7.1 Overview

- 7.1.1 The NZRB's application for authorisation is supported by an independent report from NERA. The table below is reproduced from NERA's report. It shows that the net benefits of commingling with Tabcorp (to the extent they can be quantified) far outweigh the limited anti-competitive detriment that would result from the potential for reduced competition between Tabcorp and the NZRB for "premium/VIP" customer business (with any such competition only arising as a result of the commingling arrangements themselves).

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- 7.1.2 The detriments are not only small, they impact on an extremely narrow customer segment ("premium/VIP" customers) currently comprising only [] individuals who are all resident overseas and hence, in the NZRB's view should be excluded for the purposes of assessing the impact on New Zealand. Detriments are discussed at section 7.4.11 below.

- 7.1.3 The proposed arrangement will have no impact outside of totalisator wagering into NZRB and Tabcorp commingled pools. Specifically, it will have no impact on fixed odds or sports betting, and would take place in the wider industry context discussed above, a significant feature of which is the competitive constraint from overseas corporate bookmakers. Accordingly, the NZRB does not consider the proposed arrangement as likely to substantially lessen competition under section 27 of the Commerce Act (beyond the deemed lessening of competition by operation of section 30).

Factual / counterfactual assessment

- 7.1.4 The factual / counterfactual assessment in this case differs from a conventional analysis because the NZRB and Tabcorp have been commingling betting pools since 2007 without any restrictions on rebating, although since the expiry of the 2007 agreements a more limited set of bet types have been available for commingling.
- 7.1.5 Both the factual (for which authorisation is sought to continue commingling) and the counterfactual (no commingling of the NZRB's bets into the SuperTAB pool) differ from:
- (a) the status quo – a transitional arrangement [] where the NZRB is permitted to commingle only 'win and place' bets into the Australian SuperTAB pool, and Tabcorp is permitted to commingle the full suite of bet types into the NZRB's pools (without any restrictions on rebating); and
 - (b) the position under the 2007 commingling arrangements – which provided for reciprocal commingling on a wider range of bet types without any restrictions on rebating.

NZRB and NERA analyses

- 7.1.6 In order to estimate the net benefits of commingling with Tabcorp, the NZRB has analysed the costs it would incur if it had to cease commingling into the SuperTAB pool, which would occur in the counterfactual. The NZRB's financial position in FY15 (prior to the expiry of the 2007 commingling agreements on 30 June 2015) provides a realistic basis for estimating avoided costs in the factual versus the counterfactual.
- 7.1.7 The NZRB's complete analysis is included in **Confidential Annexure 6**.
- 7.1.8 NERA has reviewed and tested the NZRB's analysis, and has applied the relevant aspects of it in a conventional economic framework as adopted by the Commission for analysing benefits and detriments. **Confidential Annexure 7** cross-references NERA's calculations to the NZRB's analysis.
- 7.1.9 The NZRB's analysis quantifies the costs it would incur if commingling were not permitted (i.e. the costs of the counterfactual relative to the factual). NERA takes that analysis to assess the benefits of the commingling arrangements. The NZRB's analysis assesses profit impacts to it (i.e. producer surplus), whereas NERA's analysis also includes consideration of consumer surplus impacts (although, due to data limitations is unable to estimate a figure for the benefits arising from increased consumer surplus in the factual compared to the counterfactual). The NZRB analyses profit impacts in a single year, whereas NERA has assessed the benefits over a five year period, and calculated the present value of the benefits and detriments (per Table 10 above).
- 7.1.10 The NERA report analyses the benefits under three categories – quality improvement, increased product variety and avoided costs. We discuss these benefits in detail in sections 7.2 - 7.4 below.

7.2 Benefits from quality improvement

- 7.2.1 Commingling produces deeper and more liquid betting pools, with more stable odds. Stand-alone pools are smaller, more volatile and have less appeal to wagering customers.
- 7.2.2 Pool stability and liquidity benefit all customers placing bets into the pool. The larger the pool the more stable the dividends payable on the pool because large bets do not have the same volatile effects as they do in smaller pools.
- 7.2.3 Commingling with Tabcorp will provide the NZRB's customers with the benefit of increased wagering stability and frequently bigger dividends.
- 7.2.4 By way of example, this is shown in Table 11 below, which compares the NZRB and Tabcorp First4 Betting Pool dividend pay outs for the month of October 2015 for Australian thoroughbred racing. (As discussed at 1.5.5 above, the commingling of Australian exotic bet types into the SuperTAB pool ceased on 30 June 2015).

Table 11 – October 2015 Australian thoroughbred racing First4 betting pool dividends

	NEW ZEALAND TAB	AU TAB - SUPER TAB	
	NZ TAB FIRST4 DIVIDENDS	SUPER-TAB FIRST4 DIVIDENDS	VAR AU VS. NZ %
AVERAGE DIVIDEND	\$1,354	\$2,026	50%
MAXIMUM DIVIDEND	\$46,978	\$107,738	129%

- 7.2.5 The figures show that the average First4 dividend of the Tabcorp pool was 50% greater than the average First4 dividend declared in New Zealand.
- 7.2.6 NERA assesses the benefit of the quality improvement by quantifying the net annual producer surplus increase, assessed as the profit contribution of customers who would otherwise likely be lost by the NZRB, due to a lower quality NZRB totalisator offering (with fewer, smaller, less liquid and more volatile pools). There will also be substantial gains in consumer surplus, although there is insufficient data to quantify the magnitude of these gains.
- 7.2.7 NERA assesses the net annual producer surplus increase at [] and using a 10% discount rate, derives a five-year present value of []; refer to section 3.2.2 of NERA's report. The quality improvement would also bring substantial additional consumer surplus, although this is not readily calculated.

7.3 Benefits from increased product variety

7.3.1 As the ACCC has previously concluded, “international pooling arrangements are likely to result in some benefit by providing more opportunities for Australian punters to bet on overseas races”.⁴²

7.3.2 Commingling with Tabcorp will allow the NZRB to provide a substantially enhanced product offering to New Zealand customers (i.e. increased opportunities for New Zealand customers to bet on Australian and other international racing).

7.3.3 As explained below, with authorisation, the NZRB would be able to offer wagering on the 59,000 Australian and 2,150 international races currently hosted by Tabcorp. [

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7.3.4 This estimation is based on the NZRB’s internal analysis which shows that it has been able to offer wagering on around [] additional races annually since it commenced commingling with Tabcorp in 2007.

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7.3.5 Australian racing is now a core component of the NZRB’s product offering currently representing close to 50% of the NZRB’s racing turnover. In comparison, New Zealand racing represented less than 3% of total Australian

⁴² ACCC Final Determination, Tabcorp Wagering Manager (Vic) Pty Ltd & TAB Limited - Authorisations A91419 - A91424, 29 October 2014 at 86.

racing turnover in the 2015 financial year.⁴³ Accordingly, in the New Zealand context the benefit of being able to offer Australian and international racing to customers is substantially greater.

7.3.6 [

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7.3.7 [

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7.3.8 NERA assesses the benefit of the increased product variety by quantifying the net annual producer surplus increase, assessed as the profit contribution from betting on lower-ranked Australian races that would not be offered by the NZRB in the counterfactual.

7.3.9 NERA assesses the net annual producer surplus increase at approximately []. Converting this figure into present value terms NERA derives a five-year present value of []; refer to section 3.2.3 of NERA's report. Again, there would also be substantial consumer surplus attributable to betting on lower-ranked Australian races, although this is not readily calculated.

7.4 Benefits from avoided costs

7.4.1 The third benefit of commingling with Tabcorp is the avoidance of substantial costs that the NZRB would otherwise incur in the counterfactual. The NZRB's financial position in FY15 (prior to the expiry of the 2007 commingling agreements on 30 June 2015) provides a realistic basis for estimating avoided costs in the factual versus the counterfactual.

7.4.2 The NZRB has analysed the avoided costs in two phases:

- (a) Phase 1 – costs that would be incurred during the []; and
- (b) Phase 2 – ongoing costs that would be incurred post [].

7.4.3 The NZRB has analysed the avoided costs, in the two phases, in terms of real costs (of salaries, recruitment and IT infrastructure) and likely customer losses (and hence reduced revenues). The assessed likely customer loss rates differ

⁴³ Racing Australia, *A Guide to the Racing Industry in Australia 2014-2015* (January 2016) <<http://www.racingaustralia.horse/Aboutus/FactBook.aspx>> at 62.

⁴⁴ The NZRB ranks in numerical order all of the race meetings that it offers wagering on, based on contribution to the NZRB's turnover and the relevant timeslot (day and time of the race).

for the two phases. The NZRB's full analysis is included in **Confidential Annexure 6**.

7.4.4 NERA has taken the NZRB's analysis and assessed the avoidance of costs that the NZRB might otherwise incur in the counterfactual as follows:

- (a) avoided cost of [];
- (b) avoided cost of [];
- (c) avoided temporary customer losses (loss of producer surplus from []);
- (d) avoided permanent customer losses (loss of producer surplus from []; and
- (e) avoided cost of [].

7.4.5 The benefits of avoided costs are set out in section 3.2.4 of NERA's report. Again, avoidance of customer losses also avoids losses to consumer surplus, although this is not readily calculated.

The NZRB's profit funds the New Zealand racing industry and benefits the broader community

7.4.6 The avoided costs include significant revenue streams from customers who are otherwise likely to be lost in a counterfactual of no commingling. Avoiding the loss of those revenues has increased significance in circumstances where the NZRB's profits fund the New Zealand racing industry and has flow-on effects for the broader community.

7.4.7 The most significant source of funding for the New Zealand racing industry is revenue from wagering. After operating costs and expenses, the NZRB's surplus is available for distribution to the three New Zealand Racing Codes in accordance with an agreed funding model. In FY15, the NZRB distributed 98% of its net profit of \$144,033,000 to the racing industry.⁴⁵

7.4.8 The NZRB also makes a significant contribution to the development of sports in New Zealand through commissions paid to national sporting bodies for sports on which they take bets. In the 2014/15 year, the NZRB paid a total of \$6.1 million to national sporting organisations across the country.⁴⁶

7.4.9 Maintaining the NZRB's revenues through continuation of commingling with Tabcorp will sustain greater distributions to the New Zealand Racing Codes and increased tax contributions (GST, totalisator duty, problem gambling levy) that benefit the broader community.

7.4.10 Table 13 shows the journey of a \$100 bet placed with the NZRB, and illustrates the NZRB's profit contribution before operating expenses through general

⁴⁵ NZRB Annual Report 2015 at 37. This includes the gain on the sale of the NZRB's Head Office Building at Petone, which totalled \$4.9 million.

⁴⁶ NZRB Annual Report 2015 at 5.

taxation (GST, totalisator duty, problem gambling levy). As noted above, the NZRB's net profits are distributed to New Zealand racing industry and sports bodies.

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- 7.4.11 The NZRB and the racing industry are significant employers. The NZRB directly employs around 820 personnel (full-time, part-time and casual). They are involved in the various facets that make up the TAB operation – scheduling daily racing for customers in New Zealand, selling racing and sports bets through the retail network, online and telephony channels, or the broadcast of racing on TAB Trackside 1, TAB Trackside 2, and TAB Trackside Radio.⁴⁷ The New Zealand racing industry employs a significant number of New Zealanders in a direct (jockeys, trainers, breeders, racing administrators) and indirect manner (e.g. horse transport companies, veterinarians etc).⁴⁸

7.5 Anti-competitive detriment

- 7.5.1 The Specified Provisions will result in minimal anti-competitive detriment that is far outweighed by the substantial public benefits which have been proven to flow from international commingling.

⁴⁷ NZRB Annual Report 2015 at 5.

⁴⁸ In its 2010 report "Size and Scope of the New Zealand Racing Industry" IER Pty Ltd estimated that the activities of the racing industry sustain the employment of more than 16,930 full-time equivalent positions <https://nzzracingboard.co.nz/sites/default/files/documents/NZRB_Size_and_Scope_Final.pdf> at 5.

7.5.2 In practice, the rebate restrictions will only limit competition between the NZRB and Tabcorp for the business of a very small group of non-NZ resident “premium/VIP” customers. There is minimal anti-competitive detriment resulting from these restrictions because:

- (a) It is the commingling of betting pools which has created the possibility of “premium/VIP” customer movement between the various pool participants (i.e. commingling has created competition for the business of a small customer group);
- (b) The rebate restrictions will only affect the manner in which the guest totalisator deals with bets placed by “premium/VIP” customers and transferred to a host totalisator’s pool. The vast majority of the NZRB’s customers will not be impacted at all;
- (c) The Specified Provisions do not impact:
 - (i) Wagering (including rebates) offered by the NZRB on New Zealand racing;
 - (ii) Wagering (including rebates) offered by NZRB on Australian and international racing where the NZRB operates a stand-alone pool; and
 - (iii) Racing fixed odds wagering.
- (d) “Premium/VIP” customers who may be impacted by the rebate restrictions are limited in number and almost exclusively based overseas. In FY15 the NZRB had [] VIP customers generating [] in turnover and [] in profit, [] of which was attributable to wagering on Australian and International racing (Tabcorp hosted pools) and [] on NZRB hosted pools;
- (e) Only [] of the NZRB’s gross betting revenue or [] profit contribution is impacted by the proposed rebate restrictions (on the basis that if authorisation is granted the NZRB would retain current levels of VIP wagering into NZRB hosted pools but would not retain any VIP wagering into Tabcorp hosted pools);
- (f) The ability of New Zealanders to place bets with overseas wagering operators is unaffected by the rebate restraints;
- (g) The NZRB will not have any reduced incentive to minimise its costs as a result of the rebate restrictions;
- (h) The NZRB will not have any reduced incentive to invest or innovate as a result of the rebate restrictions. Conversely, the NZRB is under increasing pressure to produce more innovative product offerings in the face of increasing competitive pressure from offshore corporate bookmakers and the decline in high margin domestic totalisator wagering. The Working Group Report states that the New Zealand TAB, “*typically offers significantly fewer markets or options on any one event than other offshore operators*”⁴⁹ and as stated in the NZRB’s 2014 annual report, “*a long term*

⁴⁹ Offshore Racing & Sports Betting Working Group, *Final Report* (24 November 2015) <<https://nzsportsbetting.co.nz/other--reports>> at 51.

decline in core, higher margin tote product has seen margins continue to slip. The market has been shifting towards lower margin, fixed odds products in both racing and sports betting.”⁵⁰

- 7.5.3 NERA has modelled allocative, productive and dynamic efficiency detriments applying the Commission’s established approach.

⁵⁰ NZRB Annual Report 2014 at 8.

Part 8 - Identification of interested parties

Table 14 – Interested parties

Australian Totalisators

TattsBet	https://tatts.com/	+61 7 3632 6000	Tatts Group Locked Bag 7, Coorparoo DC, QLD 4151
Racing and Wagering Western Australia		+61 8 9445 5333 info@rwwa.com.au	14 Hasler Road, Osborne Park WA 6017

Overseas Totalisators

Hong Kong Jockey Club	http://www.hkjc.com/home/english/		
Singapore Totalisator Board (Tote Board)	http://www.toteboard.gov.sg/	Telephone: +65 6216 8900 Email: toteboard_enquiries@toteboard.gov.sg	210 Middle Road #06- 01 Singapore 188994

Industry Participants

NZ Thoroughbred Racing Incorporated	https://www.nzracing.co.nz/Home.aspx	Phone: +64 4 576 6240 Email: office@nzracing.co.nz	PO Box 38 386 Wellington Mail Centre Wellington 5045
Harness Racing NZ Incorporated	http://www.hrnz.co.nz/contact	Phone: +64 3 964 1200 Email: webmaster@hrnz.co.nz	PO Box 459 Christchurch 8140
NZ Greyhound Racing Association	https://www.thedogs.co.nz/	Telephone: (04) 589- 4900 Email: greyhound@nzgra.org.nz	PO Box 38313 Wellington Mail Centre Lower Hutt 5045
New Zealand Racehorse Owner's Federation	http://www.racehorseowner.co.nz/	Phone: +64 7 855 0338	PO Box 14027, Hamilton 3252
New Zealand Thoroughbred Breeders' Association	http://www.nzthoroughbred.co.nz/	Ph: (64 7) 827 7727 Email: nztba@nzthoroughbred.co.nz	PO Box 1058, Cambridge 3450, NZ
New Zealand Trainers' Association	http://www.nztrainers.co.nz/	Phone +64 9 4126225 Email: nztransersassn@gmail.com	PO Box 300-073, Albany, 0752

New Zealand Jockeys' Association		Phone: +64 274 930 653 Email: taylordave@xtra.co.nz	PO Box 178 Rotorua
New Zealand Standardbred Breeders' Association	http://www.harnessracing.co.nz/	Phone: 03 339 4168 Email: brad@harnessracing.co.nz	HRNZ Building 135 Lincoln Road Addington, Christchurch
New Zealand Harness Racing Trainers' and Drivers' Association	http://www.trainersanddrivers.co.nz/	Phone: 03-3433713 Email: petecee@clear.net.nz	P O Box 33-525 Barrington, Christchurch
New Zealand Trotting Owners' Association	http://harnessracingowners.co.nz/		40 Mullins Road Ardmore, RD 2 Papakura, 2582

Part 9 - Confidentiality

9.1 Confidentiality

- 9.1.1 Confidentiality is requested of the information in this application that is in bold, contained in square brackets and highlighted, and the information set out in the **Confidential Appendices**, on the basis that disclosure would be likely unreasonably to prejudice the commercial position of the parties providing the information.
- 9.1.2 The parties request that they be notified if a request is made to the Commission under the Official Information Act 1982 for release of the information for which confidentiality has been claimed.
- 9.1.3 The foregoing equally applies in respect of any additional information provided to the Commission that is expressed to be confidential.
- 9.1.4 Confidential and public versions of this application have been provided to the Commission.

Declaration

THIS NOTICE is given by the New Zealand Racing Board.

I, Jessica Meech, hereby confirm that:

- (a) all information specified by the Commission has been supplied;
- (b) if information has not been supplied, reasons have been included as to why the information has not been supplied;
- (c) all information known to the New Zealand Racing Board which is relevant to the consideration of this application has been supplied; and
- (d) all information supplied is correct as at the date of this application.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application.

I am a director/officer of the company and am duly authorised to make this application.

Dated this 1st day of June 2016

Signed by the New Zealand Racing Board:

Jessica Meech, Head of Risk and Regulatory Affairs

WARNING

It is an offence to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission. Any person who does so is liable upon summary conviction to a fine of up to \$10,000 (for an individual) or \$30,000 (for a body corporate). Refer to sections 103(2) and (4) of the Act.

Annexure 1 – Summary of the ACCC’s authorisation of Tabcorp’s international pooling arrangements

Background

- 1.1 On 7 May 2014, Tabcorp lodged an application for authorisation of its international pooling arrangements. Authorisation was granted by the ACCC on 29 October 2014 for 7 years.⁵¹
- 1.2 Tabcorp applied for authorisation of specified provisions of its international pooling arrangements with overseas wagering operators (including the NZRB) on the basis that:
- (a) the parties to the arrangements could be relevantly competitive for the purposes of the *Competition and Consumer Act 2010*; and
 - (b) there is some risk that the arrangements between Tabcorp and overseas wagering operators might be construed as having the purpose or effect of fixing, controlling or maintaining the price of pari-mutuel wagering products that are offered by Tabcorp and each of the overseas wagering operators to their respective customers.

Authorised Conduct

- 1.3 The ACCC granted authorisation to Tabcorp Wagering Manager (Vic) Pty Ltd, TAB Limited and Tabcorp ACT Pty Ltd for seven years to give effect (or, for future agreements, to make and give effect) to the Specified Provisions in international pooling agreements with Premier Gateway International Limited (**PGI**)⁵² and overseas wagering operators.
- 1.4 The Specified Provisions are those provisions which require the guest wagering operator (which may be Tabcorp, PGI or an overseas wagering operator):
- (a) to only accept, process and transmit bets to the host wagering operator that are subject to specified Betting Rules (**Betting Rules Requirement**);
 - (b) not to transmit bets to the host wagering operator from customers who:
 - (i) are not located within and/or resident of a specified territory; and/or
 - (ii) are existing customers of the host wagering operator or a related party of the host wagering operator, (and in respect of Tabcorp this includes existing customers of PGI) (**Qualified Person Provision**);
 - (c) to comply with restrictions on the transmission of bets to the host wagering operator where rebates, or rebates above a certain amount, have been paid in relation to a bet (**Rebate Provision**),

⁵¹ One key difference between the arrangements which are the subject of this authorisation application and the arrangements which were authorised by the ACCC is that under the current arrangements there is no requirement for the NZRB to commingle bets taken by in into the Tabcorp pool.

⁵² PGI is a totalisator gateway business jointly operated by Tabcorp and South Africa’s Phumelela Gold Enterprises.

and those provisions which require PGI and overseas wagering operators:

- (d) to acquire and maintain any relevant approvals required from various regulatory and controlling bodies (**Approvals Requirement**);
- (e) to not re-supply pooling services provided by Tabcorp (**Pooling Restriction**);
- (f) to:
 - (i) transmit to Tabcorp certain bets received by the guest wagering operator; and/or
 - (ii) not transmit such bets to other totalisators (**Investment Requirement**); and
- (g) to not permit certain persons to co-mingle or pool in the overseas wagering operator's pool (**Guesting Requirement**).

Public benefits and detriments

- 1.5 Tabcorp submitted (and the ACCC accepted) that the international pooling arrangements would deliver public benefits in the form of:
- (a) **the export of Australian racing** – the ACCC accepted that, by acting as a host in pooling arrangements, Tabcorp was likely to create public benefits by increasing exports of Australian racing and consequently increasing the international profile of the Australian racing industry;⁵³
 - (b) **increased funding to the racing industry** – the ACCC considered that the international pooling arrangements were likely to result in some public benefit by addressing the free rider issue (whereby multiple wagering operators use the same racing product) and result in more efficient levels of revenue flowing through to the racing industry;⁵⁴
 - (c) **preventing revenue leakage** – the ACCC had previously considered and accepted that there may be public benefits associated with preventing revenue that would otherwise be directed to an Australian TAB from being lost to an overseas wagering operator. The ACCC accepted that the Rebate Provision is directed at restricting the leakage of revenue to overseas wagering operators and minimising revenue losses for state and federal government, the Australian racing industry and Tabcorp;⁵⁵
 - (d) **increased liquidity in totalisator pools** – the ACCC concluded that international pooling arrangements would enable Tabcorp to offer more stable pools to punters betting on Australian and international races. To the extent that increased liquidity leads to greater confidence in the stability of totalisator pools, the ACCC accepted that this gives rise to a public benefit.⁵⁶

⁵³ Tabcorp Wagering Manager (Vic) Pty Ltd & TAB Limited – Authorisations A91419 - A91424, 29 October 2014 <<http://registers.accc.gov.au/content/index.phtml/itemId/1178280/fromItemId/278039>> at 75.

⁵⁴ At 78.

⁵⁵ At 82.

⁵⁶ At 84.

- (e) **increased wagering opportunities for consumers** – the ACCC accepted that the international pooling arrangements were likely to result in some benefit by providing greater choice by providing more opportunities for Australian punters to bet on overseas races;⁵⁷
 - (f) **maintaining integrity of totalisator pools** – the ACCC accepted that the relevant provisions aided Tabcorp in maintaining the integrity of its totalisator pools. To the extent that this would prevent the pools from being used for illegal activities, and assist Tabcorp to meet its obligations under state and federal law, the ACCC considered that some benefits to the public would arise.⁵⁸
- 1.6 The ACCC considered that the arrangements were also likely to result in some detriment, because overseas wagering operators that have pooling arrangements with Tabcorp would be unable to compete with Tabcorp to offer pari-mutuel betting services to Australian punters on most Australian races.⁵⁹
- 1.7 The ACCC acknowledged that the provisions may have also resulted in some detriment by limiting overseas wagering operators' ability to pool with other totalisators in relation to certain bet types, or to offer certain levels of rebates or accept bets from certain persons. However, the ACCC considered that any detriment was likely to be limited because the opportunity for overseas wagering operators to provide wagering services on Australian racing primarily occurs because of the pooling arrangements.
- 1.8 In the ACCC's view, without the pooling arrangements, competition between Tabcorp and overseas wagering operators to provide pari-mutuel wagering services to Australian punters would be limited in any event due to legislative restrictions. Furthermore, Australian punters would continue to have the option of placing fixed odds bets through traditional and corporate bookmakers (who Tabcorp considers its major competitors), as well as betting exchanges.⁶⁰
- 1.9 As a result, the ACCC considered that the relevant net public benefits test was met because international pooling arrangements would result in public benefits which would outweigh any detriment caused by a lessening of competition.

⁵⁷ At 86.

⁵⁸ At 88.

⁵⁹ At 129.

⁶⁰ At 130-131.

Annexure 2 – The NZRB’s operations

1.1 The NZRB’s functions include:⁶¹

- (a) To develop policies that are conducive to the overall economic development of the racing industry, and the economic well-being of people who, and organisations which, derive their livelihoods from racing;
- (b) To determine the racing calendar each year, and issue betting licences;
- (c) To conduct racing betting and sports betting, and make rules relating to betting;
- (d) To distribute funds obtained from betting to the racing codes;
- (e) To administer the racing judicial system;
- (f) To develop or implement programmes for the purposes of reducing problem gambling and minimising the effects of that gambling;
- (g) To undertake, or arrange for the undertaking of, research, development and education for the benefit of New Zealand racing;
- (h) To use its resources, including financial, technical, physical and human resources, for purposes that, in the opinion of the Board, will directly or indirectly benefit New Zealand racing;
- (i) To keep under review all aspects of racing and to advise the Minister of those aspects, either on its own initiative or at the request of the Minister.

1.2 The NZRB operates the New Zealand TAB which is the country’s sole provider of betting on racing and sport. It provides on-course betting services to licensed racing clubs at 57 racing venues. Off-course betting is available through more than 670 TAB retail outlets. These comprise sub-agencies (pub and club outlets), including self-service terminals, and dedicated TAB agencies. The NZRB also operates a telephone betting service, Internet betting via the TAB website www.tab.co.nz and mobile application. There are currently more than 165,000 active TAB account holders.⁶² The NZRB broadcasts racing on television channels TAB Trackside 1 and TAB Trackside 2 and TAB Trackside Radio, a national racing radio network. Trackside broadcasts on SKY digital.

1.3 There are three New Zealand Racing Codes – New Zealand Thoroughbred Racing, Harness Racing New Zealand and Greyhound Racing New Zealand (the **Codes**). The NZRB offers betting on more than 76,000 domestic and international thoroughbred, harness and greyhound races each season, as well as on approximately 32,000 domestic and international sporting events. It has betting agreements with 32 New Zealand national sporting organisations.⁶³

1.4 The NZRB has held a Class 4 Operator’s Licence to operate gaming machines since 2011. Currently 36 of the 670 TAB retail network sites host gaming machines controlled

⁶¹ Racing Act 2003, section 9.

⁶² New Zealand Racing Board Annual Report 2015, at 4-5.

⁶³ NZRB Annual Report 2015 at 5.

by the NZRB. It is estimated that the NZRB operates approximately 2.8% of total Class 4 venues in New Zealand and 2.4% of total gaming machines.⁶⁴

- 1.5 The NZRB directly employs around 820 personnel with the majority involved in the various facets that make up the TAB operation – scheduling daily racing for customers in New Zealand, selling racing and sports bets through the retail network, online and telephony channels, or the broadcast of racing on TAB Trackside 1, TAB Trackside 2, and TAB Trackside Radio.
- 1.6 The racing industry generates around \$1.6 billion in economic value added, or 0.9% of GDP in New Zealand.⁶⁵ After operating costs and expenses, the NZRB surplus is available for distribution to the Codes in accordance with an agreed funding model. In 2014/2015 the NZRB distributed \$134.2 million to the Codes.⁶⁶
- 1.7 The NZRB's total betting and gaming turnover for 2014/2015 was approximately \$2.4 billion. Betting turnover comprises turnover from totalisator and fixed odds betting. Gaming turnover is the gross proceeds derived from gaming machines. The NZRB's total betting turnover for 2014/2015 was approximately \$2.1 billion with gross betting revenue of around \$325 million.⁶⁷
- 1.8 The NZRB's total gaming turnover for 2014/2015 was \$317.1 million with gross gaming revenue of \$28.1 million.⁶⁸ Distributions of gaming profits to the Codes and external sporting bodies are determined separately from wagering profits. The NZRB has determined that up to 20% of Gaming Net Profits shall be distributed for Sports Authorised Purposes.⁶⁹ In the 2014/15 year, the NZRB distributed \$2.7 million to sporting community organisations across the country.⁷⁰ The NZRB also makes a contribution to the development of sport in New Zealand through the commission it pays to national sporting organisations for sports on which it takes bets. In 2014/2015 commission payments of \$6.1 million were made.⁷¹
- 1.9 The NZRB contributes to the New Zealand economy through payment of taxes. It is required to pay:⁷²
 - (a) Betting duty of 4 cents in the dollar on Gross Betting Revenue (\$12.5 million in 2014/2015);
 - (b) Gaming machine duty of 20 cents in the dollar on Gross Gaming Revenue (\$5.6 million in 2014/2015);

⁶⁴ NZRB Annual Report 2015 at 5.

⁶⁵ KPMG *New Zealand Racing Board: Performance and efficiency audit*, April 2014
<<https://nzzracingboard.co.nz/sites/default/files/documents/NZRB-Performance-and-Efficiency-Report-2014.pdf>> at 4.

⁶⁶ NZRB Annual Report 2015 at 50.

⁶⁷ NZRB Annual Report 2015 at 52.

⁶⁸ NZRB Annual Report 2015 at 52.

⁶⁹ NZRB Statement of Intent 2015-2017 at 15.

⁷⁰ NZRB Annual Report 2015 at 30.

⁷¹ NZRB Annual Report 2015 at 40.

⁷² NZRB Annual Report 2015 at 52.

- (c) Problem gambling levy of 0.6 cents in the dollar on Gross Betting Revenue and 1.31. cents in the dollar on Gross Gaming Revenue (\$2.3 million in 2014/2015);
- (d) GST charged on GST-inclusive Gross Betting Revenue and Gross Gaming Revenue (\$47.2 million in 2014/2015);
- (e) Broadcasting levy of 0.00051 cents in the dollar of revenue from broadcasting New Zealand;
- (f) Accident Compensation Commission (ACCC) levies
- (g) Compulsory Kiwisaver employer contributions;
- (h) Property taxes including local body rates.

1.10 The NZRB may be subject to foreign income tax on certain income earned overseas.

Annexure 3 – Tabcorp’s operations

- 1.1 Tabcorp delivers wagering services to members of the Australian public with:
- (a) A network of TAB retail outlets in agencies, hotels and clubs in Victoria, New South Wales and ACT;
 - (b) On-course in Victoria, NSW and ACT;
 - (c) TAB and Luxbet (the Tabcorp Group’s Northern Territory-licensed corporate bookmaker) accounts accessible via internet, mobile devices and phone;
 - (d) Totalisator and Fixed odds betting on racing and other sports events;
 - (e) Trackside, a computer simulated racing product, operating in Victoria, NSW and ACT, and licensed in other Australian jurisdictions;
- 1.2 Tabcorp’s wagering division employs approximately 2800 people. Its revenue for the 2014/2015 financial year was 1,856.9 million. Wagering and broadcasting makes up approximately 86% of Tabcorp’s revenue.⁷³
- 1.3 In the 2014/2015 financial year Tabcorp paid \$459.6 million in taxes on gambling, and returned \$773.2 million to the racing industry.⁷⁴
- (a) The Victorian racing industry received \$348.6 million;
 - (b) NSW racing industry received \$263.3 million;
 - (c) Race fields fees of \$91.7 million;
 - (d) Broadcast rights and international contributions of \$69.6 million.
- 1.4 Tabcorp Wagering (Vic) Pty Ltd is licensed to provide wagering services in Victoria. The Victorian licence is operated under a 50/50 joint venture with the Victorian Racing Industry. The Victorian Wagering and Betting License expires in 2024, but may be extended for a further two year period at the discretion of the responsible minister. The provision of wagering services provided pursuant to that licence is undertaken by Tabcorp Wagering Manager (Vic) Pty Ltd which is authorised as a wagering operator to provide wagering services pursuant to section 4.3A.15(1)(a) of the Gambling Regulation Act 2003 (Vic).
- 1.5 The wagering services provided in the state of Victoria, including both totalisator wagering services (provided through the SuperTAB pool) and fixed odds betting on racing, sports and other events, are delivered to members of the public on-course and off-course principally through:
- (a) Stand-alone TAB Agencies and company operated mobile betting vans and other locations in Victoria;

⁷³ Tabcorp Annual Report 2015

<https://www.tabcorp.com.au/resources.ashx/shareholderreportschilddatadocuments/1491/FileName/2C0AAD70D6709A0A56D1C5433D168591/Tabcorp_Concise_AR_2015_web.pdf> at 5.

⁷⁴ Tabcorp Annual Report 2015 at 5.

- (b) Licensed venues in Victoria; and
 - (c) Accounts (accessible via telephone, internet and mobile devices).
- 1.6 The Tabcorp Group is also licensed through its subsidiary TAB Limited under the Totalisator Act 1997 (NSW) to provide wagering services in NSW. It holds this license until 2097. TAB Limited provides both on-course and off-course totalisator wagering services (provided through the NSW TAB pool), and fixed odds betting on sporting and other events.
- 1.7 The Tabcorp Group also holds:
- (a) A licence for wagering in ACT expiring in October 2064;
 - (b) ACT Sports Bookmaking Licence expiring October 2029 with further rolling extensions to October 2064;
 - (c) ACT Approval to Conduct Trackside expiring October 2064;
 - (d) Northern Territory licence (held by associated entity Luxbet) expiring June 2020;
 - (e) A broadcasting network including:
 - (i) Three Sky Racing television channels broadcasting thoroughbred, harness and greyhound racing and other sports to audiences in TAB outlets, hotels, clubs and other licensed venues, and into homes to pay TV subscribers; and
 - (ii) A radio network in NSW and ACT, and advertising and sponsorship arrangements with Radio Sport National.
 - (f) A 50% interest in the Premier Gateway International (**PGI**) joint venture in the Isle of Man, which provides wagering services for PGI customers and pooling services to the Tabcorp Group and other international wagering operators in various jurisdictions outside Australia.
- 1.8 Tabcorp has arrangements with the following entities pursuant to which bets taken by Tabcorp Wagering Manager (Vic) Pty Ltd (as operator of the SuperTAB pool) are commingled with bets taken by third party wagering operators:
- (a) Tabcorp ACT: Tabcorp ACT is licensed to provide totalisator services in the Australian Capital Territory. Under these arrangements Tabcorp acts as Host in respect of certain totalisator bets accepted by Tabcorp ACT.
 - (b) RWWA: RWWA is licensed to provide totalisator services in Western Australia. Under these arrangements Tabcorp acts as Host in respect of certain totalisator bets accepted by RWWA.
 - (c) The NZRB.
 - (d) Phumelela: Phumelela is licensed to provide totalisator services in South Africa. Under these arrangements Tabcorp acts as both Host (in respect of Australian racing) and Guest (primarily in respect of South African racing).
 - (e) Singapore Turf Club: The Singapore Turf Club is a government body which operates a Totalisator Scheme in Singapore on behalf of the Singapore Totalisator Board. It is the sole licensed provider of betting on racing and sport in

Singapore. Tabcorp acts as Guest in respect of certain totalisator bets taken on Singapore racing.

- (f) Hong Kong: the Hong Kong Jockey Club is the company authorised to operate a Totalisator Scheme in Hong Kong. Tabcorp acts as a Hub (for third party wagering operators, including the NZRB) and a Guest (in respect of certain totalisator bets taken on Hong Kong racing).
- (g) PGI: PGI is a 50/50 joint venture between Phumelela and Tabcorp, and is licensed as a wagering operator in the Isle of Man. PGI accepts bets in its capacity as a wagering operator and also acts as a hub through which third party wagering operators may transmit bets to a host pool. Tabcorp acts as a host in relation to bets transmitted to it via PGI.

Confidential Annexure 4 – []
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Confidential Annexure 5 – [

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Confidential Annexure 6 – []
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Confidential Annexure 7 – [

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