



02 August 2006

Statement of Issues – Tabcorp Holdings Limited proposed acquisition of Unitab Limited

1. This Statement of Issues has been released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of Unitab Ltd (**Unitab**) by Tabcorp Holdings Ltd (**Tabcorp**).
2. A Statement of Issues published by the ACCC is not a final decision regarding a proposed acquisition, but provides preliminary views, and draws attention to particular issues of varying degrees of competition concern to the ACCC, as well as on the lines of enquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website: www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 11 August 2006 and anticipates making a final decision on 16 August 2006. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To be kept abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the ACCC's website which contains the Mergers Register. To find the Mergers Register follow the link to "Public Registers" and then the link to "Mergers Register".
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders, and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is intended to also provide both the merger parties and other interested parties with the basis for making further submissions should they consider it necessary

Background

5. On 7 June 2006 Tabcorp provided its submission seeking informal clearance from the ACCC.

The parties

Tabcorp

5. Tabcorp is a publicly listed company which has four principal activities being wagering, gaming and network games, media and casinos.
6. Tabcorp holds the licences to provide off-course and on-course totalisator wagering and fixed odds betting services in Victoria and New South Wales.
7. Tabcorp pools the bets it receives in Victoria with bets from Tote Tasmania Pty Ltd (Tote Tasmania), ACTTAB Ltd (ACTTAB) and Racing and Wagering Western Australia (RWWA). This contractual arrangement is known as SuperTab.
8. Tabcorp owns Sky Channel and Radio 2KY. Sky Channel is a satellite television service that telecasts thoroughbred, harness and greyhound racing. Radio 2KY is a New South Wales radio broadcaster that specialises in race broadcasting in NSW only.
9. Tabcorp owns the Star City Casino in Sydney and Jupiters' casinos in Brisbane, Gold Coast and Townsville in Queensland.
10. Tabcorp is licensed to provide gaming services to clubs and hotels under the Tabaret brand in Victoria.

Unitab

11. Unitab is a publicly listed company providing wagering services, gaming and network games, and media services.
12. Unitab holds licences to provide off-course and on-course totalisator wagering and fixed odds betting services in Queensland, South Australia and the Northern Territory.
13. Unitab provides gaming machine monitoring and value adding services in New South Wales, Northern Territory and Queensland.
14. Unitab owns RadioTAB which operates in Queensland, South Australia and the Northern Territory.

Market inquiries

15. The ACCC has conducted market inquiries with a range of interested parties, including racing clubs, hotel/clubs and other suppliers of wagering products. Most market participants expressed significant concerns about the proposed acquisition.

Statement of Issues

16. For the purpose of this Statement of Issues, the issues in this matter are divided into three categories: “issues of concern”, “issues that may raise concerns”, and “issues unlikely to pose concerns”. The ACCC is seeking comments from market participants in relation to all issues.

Issues of concern

Pooling services

17. Currently, there are three parimutuel wagering pools:

- the SuperTab pool – operated by Tabcorp combining bets placed through Tote Tasmania, Racing and Wagering Western Australia and ACT Tab and Tabcorp in Victoria;
- the Tab Ltd NSW pool – which is operated by Tabcorp; and
- the Unitab pool – which combines the bets received by Unitab in Queensland, Northern Territory and South Australia.

18. The ACCC considers that a national market exists for the supply by totalisators of the right for other totalisators to combine their bets with the first totalisators’ parimutuel wagering pool (market for pooling services).

19. Currently, the two suppliers of pooling services are Tabcorp and Unitab. The proposed acquisition will make Tabcorp the sole provider of pooling services in Australia. The current acquirers of pooling services are the totalisators in Tasmania, Western Australia and the ACT (Tote Tasmania, RWWA and ACTTAB respectively).

20. The ACCC understands that it would not be viable for either RWWA, Tote Tasmania or ACTTAB to operate without access to pooling services as their individual pools are not of sufficient size to limit the potential variance in totalisator odds occurring when larger bets are made.

21. For these reasons the ACCC has formed the preliminary view that the proposed acquisition is likely to lead to a substantial lessening of competition in the market for pooling services.

22. Tabcorp has provided the ACCC with a draft court-enforceable undertaking pursuant to section 87B of the *Trade Practices Act 1974* in order to address the competition concerns in the market for pooling services. Broadly, the key features of the proposed undertaking are:

- Tabcorp will take steps to commence the 2005 Tasmania Agreement for participation in the SuperTab pool.

- Tabcorp will offer to amend the current agreements with the SuperTab participants so that the participants may terminate their agreement with three months notice.
- If a Supertab participant exercises the right to terminate its agreement, and Tabcorp offers that participant an amended agreement to entice it to rejoin the Supertab pool, Tabcorp will also offer the amended terms to all other Supertab participants.
- Should Tabcorp hold the Victorian wagering licence after 2012 and propose to offer pooling services to other totalisators, Tabcorp undertakes that the terms of a new agreement with SuperTab participants will be no less favourable than the current agreements with SuperTab participants.
- After 2012, should any new wagering licencees wish to enter into a pooling arrangement, Tabcorp undertakes that it will not unreasonably refuse to enter into any such pooling arrangement

23. The undertaking proposed by Tabcorp is provided at **Attachment A**.

24. The ACCC is seeking the views of interested parties, particularly those who acquire pooling services from Tabcorp, as to whether the 87B undertaking proposed by Tabcorp would address the competition concerns raised by the ACCC in the market for pooling services.

Issues that may raise concerns

Wagering

25. The ACCC wishes to further investigate the issue of whether Tabcorp and Unitab compete to any significant degree with each other in wagering markets, which appear to comprise parimutuel wagering and the types of wagers available from bookmakers.

26. On one hand, the highly regulated nature of wagering markets may limit competition between Tabcorp and Unitab. In particular, exclusive totalisator licences are allocated in each State and Territory. Further legislation prevents totalisators from advertising interstate. The ACCC understands that the level of cross-border wagering remains low, despite significant increases in internet and phone betting in recent years (which might have been expected to facilitate more interstate betting).

27. In addition, totalisators do not control the odds they offer other than by changing the proportion of wagering revenue they remove from the pool before odds are calculated. This proportion is known as the 'take-out rate'. Each State government caps the take-out rate, and the ACCC understands that the totalisators overall take the maximum 'take-out' they are allowed, although take-out rates differ on different gambles. However, the ACCC understands that these variances in take-out rates on individual gambles do not reflect competition between Unitab and Tabcorp. Consequently, at this stage, it does not appear that totalisators compete on take-out rates in any significant way.

28. However, it appears that totalisators may compete as regards to the bet types they offer to punters, meaning that the proposed acquisition may result in a decrease in the bet types offered to punters. Totalisators may also compete on customer service levels, and particularly the quality of their phone and internet betting services. The ACCC also understands that Unitab, at least, may offer rebates and rewards to its customers.
29. The ACCC considers that this issue requires further analysis, and is therefore unable to form a preliminary view on it at this point in time. The ACCC requests views (with supporting information) on whether the level of cross-border wagering is likely to increase in the future and, if so, why. In particular, the ACCC would welcome information from interested parties on why recent increases in telephone and internet betting have not resulted in increases in cross border wagering.

The future allocation of wagering licences

30. Currently, State and Territory Governments have allocated exclusive licences to operate parimutuel wagering businesses within their jurisdiction. For example, in Victoria, Tabcorp's exclusive licence expires in 2012. From 2012, the Victorian Government might allocate another exclusive licence or more than one licence. In Queensland, Unitab's licence expires in 2100 but ceases to be exclusive from 2014. Consequently, the Queensland Government could allocate a second parimutuel wagering licence from 2014.
31. The proposed acquisition raises potential competition concerns in this context. Unitab has advised the Victorian Government that it wishes to provide wagering services in Victoria. The ACCC is concerned that Unitab may be the most likely effective competitor to Tabcorp for the Victorian licence when it expires.
32. Alternatively, Unitab may be the only viable applicant for a second parimutuel wagering licence if the Victorian Government allocates two licences. It would then be likely to be a significant competitor to Tabcorp in Victoria. In either case, if the proposed acquisition proceeds, Unitab would not remain as a competitor.
33. More generally, the ACCC notes that existing regulatory arrangements in each state appear to limit the ability of totalisators to compete with each other. Overall, the ACCC is concerned that if regulatory arrangements change in the future, Tabcorp and Unitab might then become strong competitors in wagering markets. In this eventuality, the proposed acquisition would prevent this strong competition arising.
34. The ACCC considers that this remains a significant potential concern. However, it requires further analysis, and the ACCC is therefore unable to form a preliminary view on it at this point in time. The ACCC requests views (with supporting information) on the issue, and particularly on prospects for regulatory change.

The acquisition of racing products

35. The proposed acquisition may raise competition concerns in markets for the acquisition of racing products from the various State and Territory racing clubs.
36. In particular, the ACCC understands that currently racing clubs do not require totalisators in different jurisdictions to pay for the right to offer parimutuel wagering on their races. If this arrangement ceased in the future, racing clubs would effectively be able to sell the right to offer wagering on their races to a number of totalisators, including Unitab. The proposed acquisition would remove Unitab from this field.
37. The ACCC has not formed a view on this issue and would welcome comments from interested parties, in particular from the State and Territory racing bodies.

Issues that are unlikely to pose concerns

Broadcasting

38. The ACCC has concluded that Tabcorp's ownership of Sky Channel racing is unlikely to raise competition issues.
39. TVN (owned by the Victorian racing industry and major Sydney race clubs) and Sky Channel (owned by Tabcorp) are the only two providers of thoroughbred race broadcasts.
40. TVN has the rights to broadcast thoroughbred races organised by its owners. Sky Channel has the rights to broadcast all other thoroughbred racing in Australia. In order to televise an Australian-wide suite of thoroughbred races, hotels and clubs need to enter into agreements with both Sky Channel and TVN. The ACCC does not consider that the acquisition of Unitab by Tabcorp alters any competition between Sky Channel and TVN.
41. Tabcorp owns New South Wales radio broadcast service 2KY which specialises in race broadcasts. Radio 2KY is broadcast in New South Wales only. Tabcorp also provides funding to Radio Sport 927 which broadcasts a racing service in Melbourne, most of regional Victoria and Tasmania.
42. Unitab's Radio TAB is broadcast in Queensland, South Australia and the Northern Territory only.
43. The ACCC considers that there are likely to be state based markets for the supply of radio broadcasts and the proposed acquisition would not give rise to competition concerns in any of these markets.

Gaming machine monitoring and state wide jackpot services

44. Tabcorp owns one casino in New South Wales (Star City in inner Sydney) and three in Queensland (Jupiters' casinos in Brisbane, the Gold Coast and

Townsville). These casinos provide, among other things, electronic gaming machines for patrons' use.

45. Post-acquisition, Tabcorp would also own the following businesses:

- Unitab's gaming machine monitoring business (for pubs and clubs) in Queensland, New South Wales and the Northern Territory; and
- Unitab's gaming machine services business in Queensland, Northern Territory and New South Wales. In particular, this business supplies value-added services (including state-wide linked jackpot services) for electronic gaming machines in pubs and clubs.

46. At this stage, the ACCC considers that the proposed acquisition is unlikely to raise concerns in gaming markets because pubs and clubs are unlikely to compete in any significant way with casinos for patrons.

ACCC's Future Steps

47. The ACCC will finalise its decision on this matter after it considers further market responses invited by this Statement of Issues.

48. The ACCC now seeks submissions from market participants on each of the issues that have been raised in this Statement of Issues not limited to but including the competition issues raised above and any other matter that may be relevant to the ACCC's assessment of the matter.

49. Submissions are to be received by the ACCC by no later than 11 August 2006. The ACCC will consider the submissions received from the market including submissions from the acquirer and target in light of the issues identified and, in conjunction with information and submissions provided by the parties, make a final decision as to an appropriate course of action to take to resolve any competition concerns that have been identified.

50. The Commission intends to make public its decision by 16 August 2006. A Public Competition Assessment for the purpose of explaining the ACCC's decision will be published on the ACCC website in due course.

**Undertaking to the
Australian Competition and
Consumer Commission**

**Given under section 87B of the
Trade Practices Act by**

Tabcorp Holdings Limited

1. Background

- 1.1 On 1 June 2006, Tabcorp (through its wholly-owned subsidiary, Tabcorp Investments) announced a takeover offer for UNiTAB (**Proposed Acquisition**). The Proposed Acquisition is subject to a number of conditions, including informal clearance from the ACCC.
- 1.2 Tabcorp (through its wholly-owned subsidiary, Tabcorp Manager Pty Ltd) has entered into the following agreements in relation to SuperTAB pooling:
- (a) Agreement dated 22 September 1998 with Tote Tasmania Pty Ltd (formerly Totalizator Agency Board) (**Tote Tasmania**) (**Current Tasmanian Agreement**).
 - (b) Agreement dated 12 October 2005 with ACTTAB Ltd (**ACTTAB**) (**ACTTAB Agreement**).
 - (c) Agreement dated 28 October 2005 with Racing and Wagering Western Australia (**RWWA**) (**RWWA Agreement**).
- 1.3 Tabcorp (through Tabcorp Manager) has executed an agreement dated 12 August 2005 (**2005 Tasmanian Agreement**). Upon the 2005 Tasmanian Agreement coming into force and effect, it will replace the Current Tasmanian Agreement.
- 1.4 The ACCC is of the view that taking into account and subject to the implementation of this Undertaking, any competition concerns it may have had in respect of the Proposed Acquisition will not arise. Accordingly, on the basis of this Undertaking, the ACCC does not object to the Proposed Acquisition.

2. Term of Undertaking

- 2.1 This Undertaking comes into effect contemporaneously with the last to occur of the following:
- (a) the Undertaking is executed by Tabcorp;
 - (b) the ACCC accepts and executes the Undertaking so executed by Tabcorp; and
 - (c) the Control Date occurs.
- 2.2 Within one week of the Control Date occurring, Tabcorp will notify the ACCC of the date of the Control Date.
- 2.3 This Undertaking will terminate automatically on, and cease to have any force or effect from, 31 December 2015.

3. Undertaking in relation to the 2005 Tasmanian Agreement

- 3.1 Tabcorp will take the actions described in Confidential Annexure A to enable the 2005 Tasmanian Agreement to commence.

4. Amendment to SuperTAB Agreements

- 4.1 Tabcorp will procure that Tabcorp Manager makes an offer to each Counterparty to the effect that Tabcorp Manager will agree to the relevant SuperTAB Agreement between Tabcorp Manager and that Counterparty being amended with effect from the Control Date by the inclusion of an additional term to the effect that the Counterparty may terminate the relevant SuperTAB Agreement without cause by giving at least three months' prior written notice to Tabcorp Manager.

5. Duration of offers

- 5.1 Tabcorp will procure that Tabcorp Manager makes each of the offers referred to in clause 4:
- (a) as soon as practicable after this Undertaking comes into force and effect; and
 - (b) on the basis that the offer will remain open for acceptance by the offeree for a period of one calendar month after the date of the offer and that the offer is otherwise unconditional.

6. Non-discrimination regarding pooling

- 6.1 If, as a result of a Counterparty giving a notice of termination of the kind referred to in clause 4, Tabcorp Manager seeks to entice that Counterparty or one or more of those Counterparties back into the SuperTAB pool by amending the relevant SuperTAB Agreement to offer more favourable terms to that Counterparty or those relevant Counterparties, Tabcorp undertakes that it will procure that Tabcorp Manager offers any amended terms to the other Counterparties so that any amended SuperTAB Agreement will not (when taken as a whole) unfairly discriminate in favour of that Counterparty relative to the other Counterparties.
- 6.2 If:
- (a) Tabcorp or a member of the Tabcorp Group holds a New Victorian Licence; and
 - (b) Tabcorp proposes that the Tabcorp Victorian Licensee enter into a new arrangement for the pooling of totalisator race wagering bets with a Counterparty (including by way of an extension of the term of a SuperTAB Agreement), which new arrangement (the **New Arrangement**) will apply upon the expiry of the relevant SuperTAB Agreement with that Counterparty on 14 August 2012; and

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- (c) all necessary approvals to enter into the proposed pooling arrangements have been obtained by the applicable Counterparty from all relevant Australian State and Australian Territory governments, Regulatory Authorities and Australian State and Australian Territory racing industry bodies,

then Tabcorp undertakes that it will ensure that the New Arrangement will (when taken as a whole) be no less favourable (having regard to the terms and conditions of the New Victorian Licence) to that Counterparty than the SuperTAB Agreement with that Counterparty as it applied immediately prior to its expiry on 14 August 2012 or immediately prior to the entry into the New Arrangement (as applicable).

6.3 If:

- (a) Tabcorp or a member of the Tabcorp Group holds a New Victorian Licence; and
- (b) either:
- (i) the Tabcorp Victorian Licensee is a party to any arrangement whereby totalisator race wagering bets that are received by the Tabcorp Victorian Licensee pursuant to the New Victorian Licence are pooled with any totalisator race wagering bets that are received by any other Wagering Licensee (including any other member of the Tabcorp Group that is a Wagering Licensee); or
 - (ii) any NSW Tabcorp Totalisator Bets are pooled with any Qld Tabcorp Totalisator Bets pursuant to pooling arrangements between Tabcorp Group members who are Wagering Licensees; and
- (c) a Wagering Licensee who is not a member of the Tabcorp Group (**Non-Tabcorp Wagering Licensee**) proposes to enter into an arrangement for the pooling of totalisator race wagering bets received by that Wagering Licensee with a pool (the **Existing Combined Pool**) of totalisator race wagering bets referred to in paragraph (b); and
- (d) the Non-Tabcorp Wagering Licensee has obtained (and continues to hold) the Relevant Approvals to enter into the proposed pooling arrangements in respect of the Existing Combined Pool; and
- (e) Tabcorp, acting reasonably, considers that the entry into any such pooling arrangement with the applicable Non-Tabcorp Wagering Licensee would not prejudice the continued existence of, or the ongoing integrity or commercial rationale or financial viability of, the applicable Existing Combined Pool,

then Tabcorp undertakes that it will not (and that it will procure that each applicable Wagering Licensee that is a Tabcorp Group member does not) unreasonably refuse to enter into any such pooling arrangement with the applicable Non-Tabcorp Wagering Licensee.

7. Compliance with this Undertaking

- 7.1 Tabcorp acknowledges that this Undertaking is court-enforceable in accordance with section 87B of the Act.
- 7.2 Tabcorp will not be liable for any failure to perform an obligation under this Undertaking if the failure is due to an event of Force Majeure.
- 7.3 The ACCC acknowledges that this undertaking imposes obligations on Tabcorp over an extended time period and that circumstances may change during that period. If Tabcorp is unable to comply with its obligations as set out in this Undertaking due to a Force Majeure or changed circumstances beyond its control, or if changed circumstances otherwise make modification of this Undertaking desirable, then Tabcorp and the ACCC must review the Undertaking and negotiate in good faith in relation to the amendment or revocation of the Undertaking.
- 7.4 Tabcorp will promptly provide the ACCC with any information which the ACCC reasonably requests in relation to compliance with this Undertaking.

8. Acknowledgment

- 8.1 These Undertakings do not prevent the ACCC from taking enforcement action at any time during or after the duration of these Undertakings in respect of any breach by Tabcorp of these Undertakings.

9. Costs

- 9.1 All costs incurred by Tabcorp in either providing information to the ACCC or in responding to ACCC enquiries as required by this Undertaking are to be paid by Tabcorp.

10. Definitions

The following definitions apply:

ACCC means the Australian Competition and Consumer Commission.

Act means the *Trade Practices Act 1974* (Cth).

Control Date means the date on which Tabcorp Investments becomes the registered holder of greater than 50% of the ordinary shares in UNiTAB.

Counterparty means the party to a SuperTAB Agreement other than Tabcorp Manager.

Existing Combined Pool has the meaning given in clause 6.3(c).

Force Majeure means an event or cause beyond the reasonable control of the affected party including, without limitation:

- (a) an act of God;
- (b) an act, omission or decision by any Regulatory Authority;

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- (c) terrorism, war, revolution or any other act against public order or authority;
 - (d) industrial action or trade disputes of whatever nature;
 - (e) the requirements of any law; and
 - (f) any an act, omission or decision of a third person other than a member of the Tabcorp Group.

New Victorian Licence means a Victorian off-course totalisator wagering licence which is granted after the date of this Undertaking and which will apply beyond 14 August 2012 following the expiry of Tabcorp's existing Victorian off-course totalisator wagering licence.

NSW Tabcorp Totalisator Bets means any totalisator race wagering bets that are received by any Tabcorp Group member that is a Wagering Licensee pursuant to an off-course totalisator race wagering licence granted under New South Wales legislation.

Qld Tabcorp Totalisator Bets means any totalisator race wagering bets that are received by any Tabcorp Group member that is a Wagering Licensee pursuant to an off-course totalisator race wagering licence granted under Queensland legislation.

Regulatory Authority means a government or a governmental, semi governmental or judicial entity or authority. It also includes a self regulatory organisation established under statute or a stock exchange.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Relevant Approvals, in respect of an Existing Combined Pool, means approval or consent:

- (a) from each Wagering Licensee who is a participant in the applicable Existing Combined Pool (other than those Wagering Licensees who are Tabcorp Group Members); and
- (b) from all Australian State and Australian Territory governments, Regulatory Authorities and Australian State and Australian Territory racing industry bodies in each of the Australian States and Territories in which a Wagering Licensee that is a participant in the applicable Existing Combined Pool is licensed, to the extent that such approval is necessary for the Non-Tabcorp Wagering Licensee to enter into the proposed pooling arrangements referred to in clause 6.3; and
- (c) from all Australian State and Australian Territory governments, Regulatory Authorities and Australian State and Australian Territory racing industry bodies in each of the Australian States and Territories in which a Tabcorp Group member is a Wagering Licensee (whether or not that Tabcorp Group Member is then a participant in the applicable Existing Combined Pool).

SuperTAB Agreement means each of the ACTTAB Agreement, the RWWA Agreement and the 2005 Tasmanian Agreement.

Tabcorp means Tabcorp Holdings Limited (ABN 66 063 780 709).

Tabcorp Group means Tabcorp and its Related Bodies Corporate.

Tabcorp Investments means Tabcorp Investments No. 5 Pty Ltd (ABN 72 105 341 366).

Tabcorp Manager means Tabcorp Manager Pty Ltd (ABN 98 064 304 016).

Tabcorp Victorian Licensee means a member of the Tabcorp Group (if any) that is granted a New Victorian Licence.

UNiTAB means UNiTAB Limited (ABN 84 085 691 738).

Wagering Licensee means a person holding an off-course totalisator race wagering licence granted under Australian State or Australian Territory legislation.

11. Interpretation

The following rules of interpretation apply:

- (a) the singular includes the plural, and vice versa;
- (b) a reference to "these Undertakings" is a reference to all the provisions of this document.

12. Notices

- 12.1 Any notice or other communication to the ACCC pursuant to these Undertakings must be sent to:

General Manager – Mergers and Asset Sales Branch
Australian Competition and Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602
Facsimile (02) 6243 1199

or to any other address which the ACCC subsequently notifies to Tabcorp.

- 12.2 Any notice or other communication to Tabcorp pursuant to these Undertakings must be sent to:

Company Secretary
Tabcorp Holdings Limited
5 Bowen Crescent
Melbourne VIC 3004
Facsimile: (03) 9868 2639

or to any other address which Tabcorp subsequently notifies to the ACCC.

**Signed for Tabcorp Holdings Limited
(ABN 66 063 780 709) by:**

Director Signature

Director/Secretary Signature

Print Name

Print Name

Date:

This Undertaking offered by Tabcorp Holdings Limited (ACN 063 780 709) is accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Trade Practices Act 1974*

Graeme Julian Samuel

Chairman

Date: