

Issue 1

The Commission has not recognised the key features of totalisator betting and has confused TABs with totalisator betting.

Use of the Term TAB

“The TAB” is a term widely used to refer to those bodies in each State or Territory that currently have the functions of the old government owned Totalisator Agency Boards. Some of those bodies, such as Tabcorp in Victoria, have been privatised and some, such as TOTE Tasmania are still in government ownership. The TABs offer a range of wagering products and services including totalisator and fixed odds betting on racing and sport through numerous distribution channels. As a TAB, Tabcorp is the largest Australian totalisator, the largest Australian corporate sports bookmaker and is also an oncourse bookmaker.

Exhibits 1.1 and Confidential Exhibits 1.2 and 1.3 show the market position of Tabcorp in parimutuel and fixed odds betting and also provide details of our oncourse bookmaking performance during the last Melbourne Cup Carnival at Flemington.

Exhibit 1.1 – Market Position of Tabcorp for Parimutuel Wagering

Date	FY09 Sales \$m	FY09 Share
Tabcorp-NSW	4,763.2	34%
Tabcorp - VIC	3,840.9	27%
Tabcorp Total	8,604.1	61%
QLD TAB	2,182.5	16%
SA TAB	719.2	5%
NT TAB	164.2	1%
UniTAB Total	3,065.9	22%
RWWA	1,518.8	11%
Tote TAS	638.0	5%
ACTTAB	170.3	1%
Total	13,997.0	100%

Source ARB Fact Book 2009

Exhibit 1.2 (Confidential) – Market Position of Tabcorp in Fixed Odds Racing and Sports Wagering Services

[Confidential information has been removed]

Exhibit 1.3 (Confidential) – TAB Fixed Odds Performance at the VRC Spring Carnival

[Confidential information has been removed]

It is incorrect to use the terms TAB and totalisator interchangeably, and this error should be corrected in Chapter 13 of the Draft Report, as follows:

Page 13.1 Key points, bullet point eight
Page 13.5 Paragraph one, second sentence
Page 13.6 Paragraph three, second sentence
Page 13.6 Paragraph three, third sentence
Page 13.6 Footnote 5
Page 13.7 Paragraph two, third sentence
Page 13.8 Note 7, second sentence
Page 13.8 Note 7, third sentence
Page 13.10 Paragraph two, first sentence
Page 13.12 Paragraph two, first sentence
Page 13.17 Paragraph one, second sentence
Page 13.18 Bullet point one, sub-bullet point one
Page 13.18 Bullet point one, sub-bullet point two
Page 13.19 Bullet point three, second sentence
Page 13.30 Bullet point six, first paragraph
Page 13.34 Paragraph two, first sentence
Page 13.34 Paragraph two, fourth sentence
Page 13.38 Paragraph six, first sentence
Page 13.38 Paragraph six, second sentence
Page 13.39 Paragraph one, first sentence (twice)
Page 13.39 Paragraph one, third sentence
Page 13.39 Paragraph two, sixth sentence
Page 13.39 Bullet point four, first sentence
Page 13.40 Paragraph one, second sentence
Page 13.40 Paragraph three, second sentence
Page 13.40 Paragraph three, eighth sentence
Page 13.40 Paragraph three, ninth sentence

This definitional change affects the analysis and recommendations of the Commission throughout Chapter 13 of the Draft Report.

Relevant Features of Totalisator Betting

The Commission has not recognised key features of totalisator betting that require consideration in evaluating the consequences of any change in regulation which affects the mix between totalisator, fixed odds and exchange betting.

These features include:

- **Totalisators accept bets from all customers and are the only betting model available to some customers.**

Confidential Exhibit 1.4 sets out our estimate of the value of the “premium customer” market in Australia. This segment is generally restricted to betting with totalisators as bookmakers generally refuse to take bets from this customer group due to their win rate.

Exhibit 1.4 (Confidential) – Estimated Premium Customer Turnover FY09

[Confidential information has been removed]

The limitation and removal of services by corporate bookmakers is not restricted to “premium customers”. Set out in Confidential Exhibit 1.5 is an advice from Corporate Bookmaker Centrebet, withdrawing wagering services for a non-premium customer who had won a total of \$11,600 from 52 bets on greyhound racing. Confidential Exhibit 1.6 demonstrates, by the nature of the customer’s bets, that he was not a premium customer.

Exhibit 1.5 (Confidential) – Corporate Bookmaker Centrebet Suspends Wagering Services to a Winning Non-Premium Customer

From: Centrebet [<mailto:centrebet@centrebet.com>]
Sent: [Confidential information has been removed]
To: [Confidential information has been removed]
Subject: Removal of NSW TAB & SUPERODDS

Account number: [Confidential information has been removed]

Dear [Confidential information has been removed]

I am writing to notify you of some changes that we have recently made to your Centrebet Racing account.

We regret to inform you that the betting options NSW TAB betting and SuperOdds are no longer available for your betting purposes. This is a commercial decision made by our senior management. You are welcome to bet using our fixed odds facility, but no bets can be placed on either NSW TAB and /or SuperOdds.

Please note that Centrebet reserves the right to remove these betting options at our discretion. This is listed on our racing homepage and within our rules:

Racing Bonuses: Centrebet racing bet bonuses are outlined within the Racing Terms and Conditions. Centrebet reserves the right to refuse any type of bonus on any bet.

Unfortunately, due to your removal of NSW TAB and SuperOdds, Quinella, Exacta and Trifecta Betting are also no longer available for your betting purposes.

If you have any queries please do not hesitate to contact us.

Kind regards,

Damien M
Centrebet Supervisor

Contact Details:

PO Box 1462
Alice Springs NT 0871
Australia

Tel + 61 8 8955 5800
Fax + 61 8 8955 5750
Email: complaints@centrebet.com

Note: The removed betting options were the only options available to the customer at Centrebet on greyhound racing

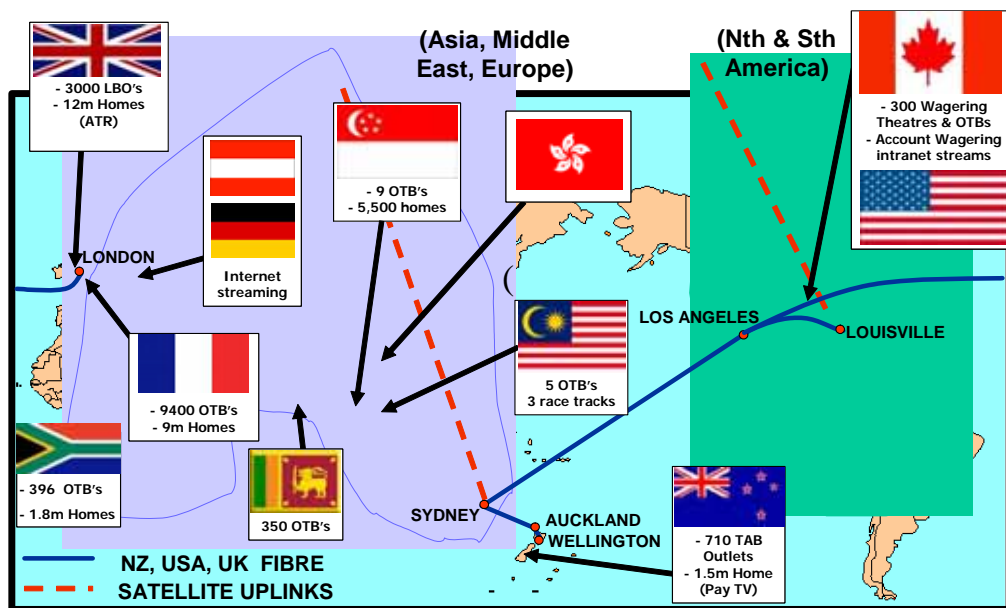
Exhibit 1.6 (Confidential) – Record of Bets Made by Corporate Bookmaker Centrebet Before Suspension of Wagering Services (Customer Win \$11,600)

[Confidential information has been removed]

▪ **Totalisators provide a means of exporting Australian Racing.**

Of the 61 countries in the International Federation of Horse Racing Authorities (Thoroughbreds) only nine license bookmakers to bet on horseracing¹. The export of Australian racing predominantly occurs between totalisators. In Australia, international pooling arrangements have been established with New Zealand and South Africa, with Singapore and the United Kingdom to occur shortly. Non-pooling export arrangements exist with 19 other countries.

Exhibit 1.7 – Overview of race product export arrangements



Australia imports racing from ten countries a year including New Zealand, South Africa, Hong Kong, the United Kingdom, Singapore and France. Product fees are paid to international racing authorities based on wagering turnover. To Tabcorp's knowledge, only the totalisators in Australia pay these product fees and abide by the requirements of international operators. We are aware that other operators free ride on international product, accepting bets on it but paying no fees. Confidential Appendix A demonstrates this.

Confidential Exhibits 1.8 and 1.9 set out the growth of international import and export business for Tabcorp and highlight the critical importance of a viable totalisator to the export and import of racing.

¹ Based on Tabcorp analysis of data wagering statistical data from the International Federation of Horseracing Authorities at www.horseracingintfed.com/

Exhibit 1.8 (Confidential) – Five Year Comparison of Tabcorp and Tab Limited Aggregate Wagering Sales on International Races (Imported Product)

[Confidential information has been removed]

Exhibit 1.9 (Confidential) – Five Year Comparison of International Export Sales on Australian Racing

[Confidential information has been removed]

- **Totalisators provide substantial contributions to ancillary services that support wagering.**

Totalisators provide significant funding to support wagering services to customers betting offcourse. These include:

- The provision of racing radio stations in all Australian markets that are either operated at a loss by the totalisator operator or are run by the racing industry and subsidised heavily by the totalisator operator. Confidential Exhibit 1.10 shows the level of funding provided to operate Sky Sports Radio, the racing radio station servicing NSW. No such subsidies are paid by any other wagering operator.

Exhibit 1.10 (Confidential) – Tab Limited Contribution to NSW Racing Radio

[Confidential information has been removed]

- PayTV cost contributions are made by each Australian totalisator to subsidise the cost of providing racing vision on PayTV services into the home. Confidential Exhibit 1.11 demonstrates the value of this contribution over the past three years. No other wagering operators make a contribution to this service.

Exhibit 1.11 (Confidential) – Pay Television Cost Contribution by Australian TABs FY07 to FY09

[Confidential information has been removed]

- Newspaper form guides are provided to Australian racing consumers in the major daily newspaper in each jurisdiction through joint funding arrangements between the racing industry and totalisators. Confidential Exhibit 1.12 shows the value of this contribution in Victoria and New South Wales for the past three years. No other wagering operators make a contribution to this service.

Exhibit 1.12 (Confidential) – Newspaper Form Guide Contribution by Tabcorp Holdings Limited FY07 to FY09

[Confidential information has been removed]

- Oncourse totalisator facilities are provided by TABs to race meetings conducted by racing bodies, including picnic meetings. In many cases, totalisator facilities are the only wagering opportunity available to oncourse punters as bookmakers are under no obligation to field at race meetings, and provision of their services cannot be relied upon by race clubs. The number of race meetings in which totalisator services were provided in Victoria and NSW in 2008/09 is included as Exhibit 1.13.

Exhibit 1.13 – Oncourse Totalisator Services Provided at Race Meetings FY09

Oncourse Totalisator Services FY09	NSW	Victoria	Total
Metro	323	635	958
Country Meetings	1,408	1,039	2,447
Non Tab	475	91	566
Auditoriums	455	-	455
Picnic	10	35	45
Total	2,671	1,800	4,471

Source: Tabcorp management information

- **Totalisators incur high technology, operations and compliance costs.**

Totalisators require significant investment in technology, and are subject to onerous regulatory oversight and compliance obligations. As a result, consumers place a high value on the integrity and security of totalisator betting.

Confidential Exhibit 1.14 demonstrates Tabcorp’s technology and compliance costs of totalisator betting and fixed odds betting in NSW and Victoria for the past three years, together with the systems development costs associated with new totalisator betting products. Parimutuel betting, by its nature, requires much higher levels of investment and cost, in comparison to fixed odds operations.

Exhibit 1.14 (Confidential) – Comparison of Tabcorp’s Technology, Operations and Compliance Costs of Totalisator and Fixed Odds Operations

[Confidential information has been removed]

Continued innovation and product development in totalisator betting requires totalisator operators to receive an adequate return on this investment through customer acceptance and the regulation of free riding by other operators.

- **Totalisators provide a valuable bet back facility for bookmakers.**

Totalisators enable bookmakers to mitigate risk by accepting bet backs into the totalisator pool. At Confidential Exhibit 1.15 we have provided the identified level of bookmaker bet back activity for 2008/09.

Exhibit 1.15 (Confidential) – Bookmaker Back Bets with Tabcorp by Wagering Category

[Confidential information has been removed]

If substitution away from the totalisator towards fixed odds occurs, there will be a serious impact on the viability of the totalisator as a risk mitigation service.

- **Totalisator betting requires pools.**

Totalisator betting is a form of betting materially different to bookmaking and exchange betting. To be viable, each wagering product offered by a totalisator must attract a sufficient pool of betting to attract customer interest.

By comparison, fixed odds betting and exchange betting require no pool and transactions can be offered freely at very low levels of liquidity. There is, therefore, a far greater range of products that can be offered in a fixed odds environment than a parimutuel environment. In sports, for example, Tabcorp offers betting on over 82,995 fixed odds markets and only 732 parimutuel markets. TABs have matched the market or led the market in the development of fixed odds sports products within the regulatory restrictions imposed by each State.

In recent years, parimutuel exotic betting has grown in popularity. Until the introduction of tote odds betting, this exotic betting was exclusively a totalisator product as bookmakers could not effectively manage risk with the multiple contingencies involved. Tote odds betting provides a means for bookmakers to exploit exotic pool betting by duplicating totalisator service offerings and then offsetting some of the risk by selling the bets to the highest bidder (ie through receipt of rebates from totalisators).

Implications

The implications of confusing TABs with totalisators and not recognising the significant features of a totalisator manifest themselves in all areas of Chapter 13 of the Draft Report. The following issues arise:

- The consequence of the current findings and recommendations is that the fixed odds arms of the TABs would be able to offer tote odds products. In practice, this would lead to an inevitable erosion of the totalisator as a viable betting model in Australia. Totalisator betting would move to a similar market share as that of the United Kingdom totalisator, ie 7% to 10%.
- Is the offering of fixed odds betting by TABs through all distribution channels supported? This area has not been addressed in the report and is subject to varying regulatory provisions in each Australian jurisdiction. In NSW, for example, TAB Ltd can offer fixed odds betting on all races but cannot offer this service in its retail outlets. In Victoria, Tabcorp can offer fixed odds betting on all races in all distribution channels.
- What is the impact on Australia's export of horse racing if a significant migration from totalisator to fixed odds betting occurs?
- How would form guides, vision and radio services be provided and funded should totalisator betting diminish in significance?
- Is a level playing field between the corporate bookmaking arms of the TABs and the corporate bookmakers themselves supported? If so, are equivalent tax rates, product fees, product regulation, etc supported?

Issue 2

The Commission has not recognised important features in the historical development of the wagering market.

There are several significant inaccuracies in the analysis of the history of the wagering market included in the Draft Report.

For example, on page 13.4 the following statement appears:

However, just as the emergence of off-course bookmakers undermined the funding model of the 1950s,³ new entrants to the wagering market are once again necessitating change to the current system.

³*Up until this time the racing industry had largely been funded by spectator admission fees and fees paid by on-course bookmakers.*

Totalisator wagering has operated in Australia since the 19th century with the first automated version appearing in 1916. Oncourse totalisators freely competed with bookmakers and provided a funding source to the racing industry since that time.

Offcourse bookmakers did not emerge in the 1950s. Free riding by illegal offcourse bookmakers was a contentious issue in racing for most of the 20th century.

Examples from “The Official History of the VRC” include:

- 1905 “VRC and other club actions to combat illegal betting activities of John Wren” p178-179
- 1932-1935 “L.K.S.Mackinnon, like all other racing administrators, was well aware of this mushrooming, illegal off course betting menace – SPs who lived off racing like parasites, paying no money for the right. In company with Chairmen of other metropolitan clubs, he complained bitterly about the failure of the police to arrest them and the lenient penalties given against the few who appeared in court...Mackinnon knew the odds against obtaining more action from the government and the police were high but persisted in his campaign. He attacked SPs at every turn...he provoked the police and mocked the government for its apathy and for its outdated legislation. His ceaseless agitation came to a climax when his life was threatened.” p279-280
- 1940 “Starting price bookmakers were still a nagging thorn in the racing industry’s side. Disgusted with the State Government’s indifference and the VRC’s failure to keep attacking the problem, the Pakenham Racing Club.... decided to take the bull by the horns. In 1940, it introduced a measure so contentious and astounding it made newspaper headlines all over Australia. Irrespective of the general inconvenience caused, it stripped the racecourse of all telephone and telegraph communications simply to stop SP Agents sending information off the course. It also tried to prevent the broadcast of races by refusing radio stations permission to enter the course. Mornington and Cranbourne did the same”.

- 1951 Chester Manifold (VRC chairman believed ... *“SP bookmaking no matter how illegal, how dangerous to community standards and morals, or how much it abetted crime, would never be quashed. Its operations would continue to pocket untaxed millions from race meetings that cost a fortune to stage but towards which they contributed nothing... It was no exaggeration to say that ... racing had never before been in such a perilous position. Manifold, however, believed he had a solution – a legal, off course betting system harnessed to the oncourse totalisator. He took a proposal to the new Premier, Mr McDonald.”* p374

Free riding by illegal offcourse bookmakers was not dealt with by the introduction of TABs. Royal Commissions and inquiries in various States have made reference to the prevalence and burgeoning growth of illegal offcourse bookmaking.

Examples include:

- Royal Commission on activities of the Federated Ship Painters and Dockers Union 1984;
- Report on SP bookmaking and related criminal activities in Queensland 1991; and
- Review of Thoroughbred Racing in New South Wales 1995.

Several important changes occurred during the late 1990s that made a marked impact on the extent of illegal offcourse bookmaking:

- The privatisation of the TABs and the entry of TABs into the pub and club environment.
- The development of Sky Channel as a provider of racing vision to commercial outlets with TAB facilities.
- The emergence of the internet and legal offcourse bookmaking over the internet and telephone.

Wagering turnover showed a marked improvement for all operators during this period, reflecting in part the migration of betting from illegal unlicensed operators to licensed bookmakers and TABs. From 2002 onwards tote odds betting was the single biggest driver of corporate bookmaker growth.

The Commission states that the essential industry funding arrangements have remained the same since the 1960s. This is inaccurate.

Major changes to funding arrangements have occurred through:

- The privatisation of most of the larger TABs in the late 1990s where, in Tabcorp's case, totalisator profits were distributed between the operator and the industry, and the concept of a “product fee” was introduced into funding arrangements.
- The introduction of funding distributions arising from sportsbetting and animated racing in the late 1990s.
- The introduction of media rights as a new income stream for the racing industry (refer to Confidential Exhibit 2.1 for racing industry revenues derived from media rights).

Exhibit 2.1 (Confidential) – Domestic Broadcast Revenues Received by Racing Industry

[Confidential information has been removed]

- The introduction of export revenue for the racing industry resulting from the provision of Australian racing vision to foreign markets (refer Confidential Exhibit 2.2).

[Confidential information has been removed]

- The introduction of race fields fees applicable to all wagering operators for the use of racing information, commencing with Victoria in 2006 and now extending to all States.

The Draft Report has not identified the significant changes in the form of free riding that has occurred since the effective curtailment of illegal SP Bookmakers in the late 1990s.

Free riding was a problem for the racing industry for more than a century as the free riders were mostly bookmakers operating illegally with no regulatory compliance or oversight. There has been a substantial shift in the nature of free riding in today's market.

- Today all operators are licensed and offer wagering services legally in compliance with current laws. Free riders can, therefore, be identified and regulated.
- The form of free riding has changed:
 - Wagering operators do not contribute at equivalent rates to the racing industry.
 - Wagering operators do not contribute at equivalent rates to consumer services (vision, data, radio, form, etc).
 - Wagering operators do not contribute at equivalent rates to providers of international racing product nor do they all comply with conditions imposed by foreign jurisdictions.
 - Some wagering operators exploit tax and product fee arbitrages to transfer bets between jurisdictions, distorting the operation of the market.
 - Some wagering operators duplicate the products and services of the totalisators without contributing to the cost of developing totalisator dividends.

Implications

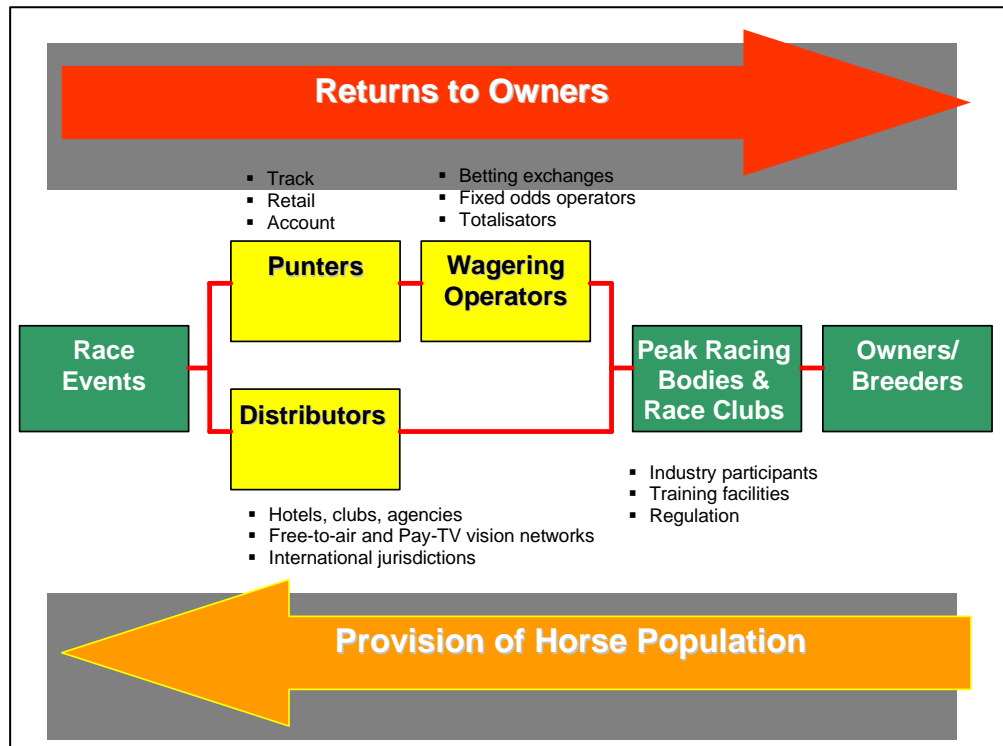
By not recognising the dynamic nature of the wagering market and the evolution of industry funding arrangements, the Draft Report contains gaps in the assessment of regulatory response options. The following key questions arise:

- What regulatory solution is proposed for the failure of some wagering operators to pay international product fees for betting on imported racing?
- Are the arbitrage plays that currently occur, for example in the form of totalisators paying corporate bookmakers rebates for bet back activity, a legitimate market activity, or should this be regulated?
- How can totalisators be compensated for the cost of operating pool betting services that are copied by corporate bookmakers?
- Given all operators are licensed, is there a national licensing reform solution that can address free riding?
- For the first time, Australian regulators have an opportunity to effectively regulate free riding. The Productivity Commission's final report has the opportunity to examine an appropriate regulatory framework to address free riding, rather than accept it as an unavoidable market outcome, and developing a response on that basis.

Issue 3

The Commission has not considered all aspects of the value chain within the racing industry, in particular, the economics of horse (and dog) ownership are not addressed.

At a high level the value chain relating to racing industry funding can be depicted as follows:



The Draft Report focuses primarily on the wagering customer and ignores the value generated by horse (dog) owners (referred to as owners).

Funds generated from wagering are largely distributed to owners through prize money policies developed by principal racing authorities. Currently, the analysis in the Draft Report stops at race clubs and the analysis of funding distribution is flawed as a result.

More than 168,518 people are involved on the production side of the thoroughbred racing industry on a full-time, part-time, casual and voluntary basis. Three-quarters are involved in the production of racing animals and one-quarter in racing and wagering, as shown in Exhibit 3.1. There is a large number of volunteers (nearly 6,465) involved in racing clubs, especially in smaller centres and rural areas, which points to racing's importance as a community and leisure activity.²

² Australian Racing Board, *Size and Scope of the Australian Thoroughbred Racing Industry*, December 2001.

Exhibit 3.1 – Thoroughbred racing industry participants

Production of Racing Animals			Racing and Wagering		
Breeders & staff	11,220	6.99%	Race club secretaries	454	1.05%
Breeders/Owners		0.00%	Race club admin & staff	15,545	36.07%
Owners and syndicates	133,089	82.89%	Jockeys	1,202	2.79%
Trainers	6,529	4.07%	Apprentice jockeys	353	0.82%
Farriers	750	0.47%	Totalisator wagering	21,950	50.93%
Float Operators	91	0.06%	Bookmakers	927	2.15%
Veterinary specialist	1,006	0.63%	Bookmakers staff	3,122	7.24%
Trainers staff	7,873	4.90%			0.00%
Total	160,558	100.00%	Total	43,099	100.00%

Source: ARB, Report on the Size & Scope of the Australian Thoroughbred Racing Industry December 2001

Note: This table does not include harness and greyhound racing

It is critical to recognise that horse owners contribute more funding to the racing industry than wagering customers. Only 14% of thoroughbred racehorses return greater than their cost of training. Despite this, Australia has one of the highest rates of horse ownership of any nation in the world.

The NSW Racehorse Owners Association reported that:

“Leaving aside the enormous capital outlay Owners spend in purchasing horses at the sales etc., [NSW] Owners spend some \$220 million on training, vets, agistment etc per year.

The return to Owners on this outlay is in the vicinity of \$99 million per year (55%) which represents a 435% loss.

Thus, contrary to other reports, the Owners are in fact subsidising the [NSW] racing industry by \$121 million per year.”

NSW Racehorse Owners Association Media Release, 3 September 2009

The conduct of race meetings of different prize money levels, in different locations, at various grading levels is governed by principal racing authorities to meet the needs and demands of racehorse owners. While wagering returns are certainly a consideration in race programming, the needs of owners take precedence in ensuring that an appropriate race program for all horses in training can be provided. Travel costs for owners are minimised through the conduct of regular race meetings in each geographic region of a state.

Prize money levels have a significant impact on the size of the overall horse population. Owners make investment decisions in horses anticipating returns over the racing life of the horse, which typically is a period of four to seven years commencing one to two years after purchase. Prize money levels impact the purchase price of yearlings, and Principal Racing Authorities, in recognising the long term investment decisions of racehorse owners, attempt to provide consistent growth in returns to owners at least at the rate of CPI. Volatility in returns is avoided and seen as detrimental to the confidence of horse owners to invest in the industry.

A significant related industry is the breeding industry in Australia. Breeders constitute a large part of the ownership base and provide substantial export earnings to the Australian economy. Domestic prize money returns underpin the viability of Australia’s breeding industry.

The Commission has not recognised the commercial separation that exists between wagering operators (particularly TABs) and the racing industry.

The racing industry provides the racing “product” to wagering operators who are largely free to accept or reject it in preference to other forms of product the wagering operator may wish to provide to its customers. The Commission consistently treats the racing industry and TABs as a single entity, and while there are joint venture structures and commercial agreements in place which are the basis of industry funding, TABs are largely free to conduct wagering operations, develop wagering products and price those products as they see fit to meet the needs of their customers.

Exhibit 3.3 – Racing Industry and Wagering Industry are Symbiotic but Different

Racing Industry	Wagering Industry
Producer of racing product	Distributor of racing product
Funded by owners and punters	Funded by punters
Extensive production cycle	Shallow production cycle
Principally a “not-for-profit” sport	Commercial enterprise
Investment intensive with low rates of return on investment	Commercial rates of return on investment
Focused on the promotion and development of thoroughbred racing	Racing, sporting and novelty events

Source: Presentation by AJC Acting Chief Executive Darren Pierce

The racing industry sets a price for its product and TABs have the opportunity of assessing the cost of this input into their customer pricing decisions. Customer demand and relative profitability can affect the focus of their gambling promotion between:

- Fixed odds and parimutuel betting;
- Thoroughbred racing, harness and greyhound racing; and
- Domestic racing and sportsbetting.

Examples of this varying focus can be seen in any examination of the wagering calendar and the conduct of TABs:

- World Cup Soccer takes precedence over other forms of wagering when the tournament takes place every four years (refer relative spend in last World Cup in Confidential Exhibits 3.4 and 3.5).

Exhibit 3.4 (Confidential) – Tabcorp and Tab Limited Sales Comparison on Leading Racing Events During the Month of the 2006 Soccer World Cup

[Confidential information has been removed]

Exhibit 3.5 (Confidential) – Tabcorp and Tab Limited sales comparison on leading racing events and Soccer World Cup final on 9 Jul 06

[Confidential information has been removed]

- The AFL and NRL Grand Finals take precedence over horseracing when they are conducted each year (refer examples of relative turnover in 2009 at Confidential Exhibits 3.6 and 3.7).

Exhibit 3.6 (Confidential) – Tabcorp and Tab Limited sales comparison on leading racing events and NRL Grand Final on 4 Oct 09

[Confidential information has been removed]

Exhibit 3.7 (Confidential) – Tabcorp and Tab Limited sales comparison on leading racing events and AFL Grand Final on 26-Sep-09

[Confidential information has been removed]

- The Hong Kong International meeting in December each year takes precedence over domestic Australian racing (refer Confidential Exhibit 3.8).

Exhibit 3.8 (Confidential) – Tabcorp and Tab Limited sales comparison on leading racing events and Hong Kong International meeting on 13 Dec 09

[Confidential information has been removed]

- Fixed odds betting is receiving increased prominence by all TABs (refer examples of advertising and promotion at Appendix B).

A similar autonomy of decision making exists with corporate bookmakers and betting exchanges.

Implications

- The paragraph on Page 13.11 of the Draft Report dealing with the rationale for the number of racetracks in Australia is inaccurate and should be deleted.
- It is inappropriate to prescribe the input price the racing industry wishes to charge for its racing product when it is supplying this product into a competitive wagering and gambling market with multiple consumer choices available.
- The analysis of funding distribution should be amended to correct the inaccuracies and omissions in describing the nature and effect of current distribution arrangements.
- The final report should address the racing industry's pricing of its media rights and the free riding on racing vision which occurs by exchanges and corporate bookmakers.

- The final report should recognise owners as a consumer group, and their relative importance in the value chain. This will affect conclusions made elsewhere in the final report.
- The statement “a move to a smaller racing industry” should be clarified. Does this mean fewer horses but the same number of races or fewer races with more horses per race, or fewer racetracks with more racing per racetrack?
- The final report should include the consequences of its findings and recommendations for Australia’s breeding industry, horse ownership base and racing participant levels.

Issue 4

The nature of the parimutuel market in Australia is not accurately described in the Draft Report.

It is incorrect to assert that TABs do not compete with one another.

The ACCC has recognised competition between TABs. In its decision to grant authorisation of the totalisator pooling arrangements between Tabcorp and each of ACTTAB and RWWA, the ACCC stated that:

[M]ost states and territories have removed, or are in the process of removing, restrictions on advertising by wagering providers not licensed in that jurisdiction. This, in combination with the increased prevalence of telephone and internet wagering, has facilitated greater competition between wagering providers across jurisdictions.

ACCC Determination of Applications for Authorisation A91127 – A91132 & A91162 – A91165, 9 September 2009 at para 4.28

Tabcorp's public submission to the ACCC in relation to its application for authorisation of its pooling agreements with RWWA and ACTTAB is at Appendix C.

All TABs compete in the national fixed odds betting market with separately branded offerings.

Exhibit 4.1 – TAB fixed odds brands

TAB	Brand
Tabcorp NSW & VIC	TAB Sportsbet
UNiTAB (SA, QLD, NT)	Tatts Bet
RWWA	Player
Tote Tasmania	Beta Sport
ACTTAB	ACTAB Sportsbet

TABs do not have separate accounts for fixed odds and parimutuel betting. Therefore, if a customer opens an account with any of the above fixed odds brands, the customer will also be able to use that account to place parimutuel bets with the relevant totalisator. For example, if a Victorian resident decides to open a Tatts Bet account, they may also use that account to place parimutuel bets into the UNiTAB totalisator pool.

Tabcorp also has an arrangement with Australia Post that enables its customers to deposit and withdraw from their TAB account at Australia Post outlets. A copy of the media release announcing this initiative is attached at Appendix D.

Totalisators actively compete in the premium customer segment of the market (estimated market size \$1.2 billion) and in the rapidly growing account betting segment of the market. Set out in Exhibit 4.2 is information on the relative size of this market.

Exhibit 4.2 – Australian totalisator account betting market

Date	FY09 Sales \$m	FY09 Share
Tabcorp-NSW	598.5	30%
Tabcorp - VIC	651.2	32%
Tabcorp Total	1,249.7	17%
QLD TAB	344.9	5%
SA TAB	94.3	5%
NT TAB	31.6	2%
UniTAB Total	470.8	23%
RWWA	124.2	6%
Tote TAS	112.3	6%
ACTTAB	58.4	3%
Total	2,015.4	100%

Source: ARB Fact Book 2009

The analysis of the complex issues involved in determining domestic totalisator pooling arrangements is deficient.

Third party totalisator pooling requires ACCC authorisation, tax exemption approval by the host jurisdiction's government, and complex and costly system interfaces.

We have attached at Appendix E the press release issued by the Victorian Government announcing its review of the taxation exemption afforded to Tote Tasmania in Victoria. This recognises the competitive tension that exists between TABs.

Expansion or continuation of domestic pooling arrangements will be dependent on tax harmonisation between jurisdictions, the development of competition law and consistency in wagering policy between jurisdictions. These issues are worthy of further investigation.

Implications

- The Draft Report recognises the value to wagering consumers of large totalisator pools, but the recommendations, if implemented, will lead to exactly the opposite.
- The analysis of the public policy and regulatory changes needed to facilitate pooling between totalisators is incomplete.
- The Commission recommends the retention of totalisator exclusivity arrangements without recognising the level of existing account based competition that exists and is growing significantly.

Issue 5

The Commission has developed inconsistent findings relating to exclusivity in proposing that:

- Totalisator exclusivity should be retained in support of larger pools;
- Tote odds betting should be allowed; and
- Arguments for retail exclusivity are not compelling.

The effect of these recommendations is to provide no exclusivity at all.

The Draft Report finds that tote odds betting should not be prohibited, which means corporate bookmakers would be free to continue to offer all totalisator services including win/place and exotic betting. The implication of the finding that the arguments for retail exclusivity are not compelling is that tote odds betting would be offered through all distribution channels including retail outlets. The combined effect of these is to eliminate any form of totalisator exclusivity.

Further, the retention of exclusivity for totalisator licences will be meaningless if tote odds betting is not prohibited and retail exclusivity is removed. There will be no exclusivity at all for holders of totalisator licences, except an exclusive right to pay higher wagering taxes and product fees.

The effect of these findings would be a significant deterioration in totalisator pools and totalisator betting to the detriment of consumers, the racing industry, Australia's racing and breeding export markets and overall employment in the sector.

The Commission has not fully examined retail exclusivity.

The finding that the arguments for retail exclusivity are not compelling ignores the existing regulatory provisions governing bookmaking in Australia, and the historical issues associated with unregulated bookmaking activity.

Bookmakers were denied access to retail markets for good reasons in the 1960s and the expansion of telephone and internet betting for bookmakers and exchanges has come with careful regulatory oversight provisions which include:

- The recording of all telephone betting transactions.
- The requirement to operate internet betting services at racetrack facilities under regulatory supervision.
- The prohibition of cash based betting except under the direct supervision of stewards at racetracks.

The finding does not consider the conclusions of Royal Commissions relating to the negative community outcomes associated with unregulated and unsupervised bookmaking activity in the retail sector. Set out in Exhibit 5.1 is a summary of the finding of the report on SP Bookmaking and related criminal activities in Queensland in 1991.

Exhibit 5.1 – Summary of findings of the report on SP Bookmaking and related criminal activities in Queensland, 1991

Before substantive changes to either the law or law enforcement methods can be made, grounds to justify such change must be established. On the basis of the studies that it has undertaken over the last 12 months, the Commission is satisfied that such grounds do exist. Moreover, if there were to be no change in current arrangements, the Commission believes that Queensland will experience a progressive increase in SP bookmaking activity to the detriment of legal gambling, consolidated revenue, and the community as a whole.

To summarise briefly, the aspects of concern in unlawful bookmaking that give rise to grounds for some action to be taken would appear to be as follows:

- *SP bookmakers pay no turnover tax or licensing fees. This represents a substantial denial of government revenue.*
- *SP bookmakers do not pay their full share of income tax.*
- *The racing industry suffers as a direct result of SP bookmaking.*
- *The greater economy must also be seen to suffer as the result of money being siphoned into the black economy by unlawful bookmakers.*
- *There are other costs associated with unlawful bookmaking. These include such matters as the need for additional police resources, and the significant costs associated with the prosecution of SP bookmakers. Significant amounts of time and resources must be devoted by various government departments to the ongoing SP bookmaking problem.*
- *Unlawful bookmaking has connections with other forms of major and organised crime.*
- *Because of the associations between SP bookmakers and other criminals, the SP network provides an ideal conduit for crime. Criminals who may otherwise have been regionally confined are given the opportunity to expand their activities and make contact with other criminals and crime opportunities in other states.*
- *The SP bookmaking industry has consistently proven itself to be one of the principal sources of corruption of police and other public officials.*
- *SP bookmakers are able to resort to either the threat, or actual use of violence.*
- *There is a nexus between SP bookmaking and race fixing.*
- *There are significant social problems involved with SP bookmaking. These include the family dysfunction that tends to result from gambling addiction*

Source: Report on SP bookmaking and related criminal activities in Queensland – 1991, Sir Max Bingham QC, Chairman

The Commission has incorrectly described the existing regulatory provisions relating to tote odds betting, by saying it is permitted in all jurisdictions but New South Wales, Tasmania and Western Australia.

Set out in Exhibit 5.2 are the existing regulatory prohibitions relating to the practice of tote odds betting, which demonstrate that the above statement is incorrect.

Exhibit 5.2 – Legislative provisions relating to tote odds betting

Jurisdiction	Tote odds offences
Victoria	<p>Section 2.5.14 of the Gambling Regulation Act 2003:</p> <p><i>A person must not –</i></p> <p>...</p> <p><i>(e) make or enter into a bet on the result of any event whereby the person on the person's own or any other person's behalf agrees to pay to the other party to the bet, if the latter should win it, a sum of money the amount of which is dependent upon the result of the working of a totalisator;</i></p> <p>...</p> <p><i>(g) make a contract or give an undertaking to pay or receive any money, the amount of which is determined or to be determined by the result of the working of a totalisator.</i></p> <p>Section 4.7.2(1)(b) of the Gambling Regulation Act 2003:</p> <p><i>(1) A person (not being a person lawfully conducting or employed in the wagering business conducted by the licensee or wagering operator, the wagering and betting licensee or a permit holder) must not –</i></p> <p>...</p> <p><i>(b) make or offer to make any contract or bargain to pay or receive a sum of money calculated at a rate determined or to be determined by the result of the operation of a totalisator on any event; or</i></p> <p>There is an exception to the second offence. Section 4.7.2(2) states that subsection (1)(b) does not apply to a Victorian-licensed bookmaker who is carrying on his or her business at an authorised race meeting and who complies with any conditions imposed by the Minister.</p>
NSW	<p>Section 88 of the Totalizator Act 1997:</p> <p><i>A person:</i></p> <p><i>(a) who makes or enters into a bet, or who offers to make or to enter into a bet, on the result of an event or contingency, by which the person agrees to pay to the other party to the bet, if the other party should win the bet, a sum of money the amount of which is dependent on the result of the working of a totalizator on the event or contingency, or</i></p> <p>...</p> <p><i>(d) makes or offers to make a contract or bargain of any kind to pay or receive money on an event or contingency determined or to be determined by the result of the working of the totalizator on an event or contingency,</i></p> <p><i>is guilty of an offence.</i></p>

Queensland	LR 118(I) of the Queensland Racing Local Rules (amended 1 May 2005): <i>A bookmaker, bookmaker company shall not make a bet whereby the bookmaker agrees to pay to the bettor, if the latter should win the bet, a sum of money the amount of which is dependent upon or related to any dividend declared and paid by a totalisator; save that a bet for place may only relate to a dividend declared and paid by a totalisator.</i>
WA	Section 51 of the Rules of Wagering 2005: <i>The following wagers may not be offered, made or accepted by a bookmaker –</i> ... <i>(c) a wager where the dividend payable in respect of the wager is based on the dividend payable on any totalisator;</i> ...” <i>Rules of Wagering 2005 made pursuant to s.120 of the Racing and Wagering Western Australia Act 2003.</i>
Tasmania	Section 68 of the Racing Regulation Act 2004: <i>A registered bookmaker or bookmaker’s agent must not accept a bet on a horse race, greyhound race or approved sports event at a price determined, directly or indirectly, by the dividend paid for the race or event on any totalisator.</i>

In fact, the Northern Territory (only from 2008), South Australia and ACT are the only jurisdictions to have a full regulatory tolerance of tote odds betting.

The Commission has incorrectly described the reasons for price advantage of corporate bookmakers in tote odds betting.

Lower costs on internet and telephone platforms are irrelevant as larger scale internet and telephone operations are managed by the TABs. The advantage enjoyed by corporate bookmakers is almost entirely attributed to the tax and product fee differential available in the Northern Territory market.

Set out in Exhibit 5.3 is the different Victorian race fields product fee paid by the NSW totalisator and a corporate bookmaker on an identical bet providing an identical consumer dividend.

Exhibit 5.3 – Difference in race field legislation product fees between a totalisator and corporate bookmakers on the same bet

A flexi trifecta at \$100 will require payment of race fields fees as follows:-	
If offering ‘tote odds’ by a NT bookmaker	On a VIC race
(VIC Race fields)	\$0 to \$0.50
	On a NSW race
(NSW Race fields)	\$1.50
If offered by NSW tote	On a VIC race
(VIC Race fields)	\$1.82
	On a NSW race
(NSW Race fields)	\$1.50

Source: Presentation by Robert Nason to a Racing Industry Conference on 9 August 2009

The Commission has not analysed the competition for tote odds bet backs that exists in the tote odds betting market.

We have provided in our confidential submission our estimate of the value of the bet back market in Australia (refer to Confidential Exhibits 1.15 and 1.16) and the current offerings of the various totalisators.

Tote odds betting through these arrangements is no more than a transfer mechanism between larger states to smaller states of wagering returns, and government taxation. A significant proportion of tote odds betting is not bet back with totalisators at all or is not bet back with the totalisator that was responsible for developing the original totalisator dividend.

Contrary to the Draft Report's assertions, Tabcorp believes that only **[Confidential information has been removed]** of tote odds betting from corporate bookmakers is being bet back through Australian totalisators (refer to Confidential Exhibit 1.15 and corporate bookmaker component of Confidential Exhibit 1.2).

The Commission has ignored the potential role of the TABs in providing tote odds betting services and has miscalculated the impact of tote odds betting on totalisator pools.

In respect of tote odds betting, we disagree with the finding that regulatory responses such as reform of the funding model are adequate to deal with the issues this form of betting raises.

The use of the words TAB and totalisator interchangeably (refer to our comments in Issue 1) have led to incorrect conclusions on page 13.40 of the Draft Report. The Commission infers that consumers prefer a tote odds betting product to a totalisator product. If this holds true and favourable product fee arrangements continue to apply, it is probable that the fixed odds arms of the TABs will commence offering tote odds betting. The implications of this have not been examined. We have included in Exhibit 5.4 our estimate of the impact on current totalisator pools of tote odds betting which refutes the Commission's conclusions that "the adverse scale effects are likely to be small".

Exhibit 5.4 (Confidential) – Estimated Impact of Tote Odds Betting on Tabcorp's Parimutuel Pools

[Confidential information has been removed]

Insufficient attention has been paid to the negative consequences of tote pool manipulation that arise as a direct consequence of tote odds betting. Appendix F includes a number of media reports of such manipulation.

A consequence of this activity that should also be assessed is the loss of consumer confidence in totalisator betting arising from manipulation of totalisator pools.

The Commission has misreported court action taken by Tabcorp Holdings Limited.

The Draft Report (page 13.41) incorrectly reports that tote odds betting is currently the subject of a Federal Court action by Tabcorp against Sportsbet. Tabcorp notes that the Commission was advised by it on 10 June 2009 that this action had been discontinued.

Implications

The inconsistency of findings relating to exclusivity require a full reworking of the analysis in this area. In particular, the final report needs to address:

- What is meant by retail exclusivity and whether the Commission proposes allowing corporate bookmakers and exchanges to have unsupervised cash betting in retail outlets.
- What is meant by totalisator exclusivity and how does this relate to the existing operation of the market?
- What are the real consequences of tote odds betting on totalisator pools when it is estimated that only **[Confidential information has been removed]** of money bet on tote odds products is bet back into tote pools?
- Are the arbitrages that are the fundamental basis of tote odds betting appropriate?
- What regulatory options are available to deal with tote pool manipulation?

Issue 6

Insufficient attention has been given to the options available to curb offshore free riding. The Draft Report accepts at face value the threats of corporate bookmakers to relocate offshore if their free riding is restricted.

The Commission has recognised that free riding in the wagering market requires a public policy and regulatory response, yet it appears to have limited its response to what is sufficient to retain operators within Australian jurisdictions.

There has been significant evolution in regulatory options available to curb illegal online activity, which is not covered in Chapter 13. Examples include:

- The reduction in offshore betting with US residents which was achieved by effective prosecution action under US legislation, which has been supported by the Unlawful Internet Gaming Enforcement Act (UIGEA).
- The activities undertaken by the Australian Federal Government in switching off access to certain websites.
- Financial transaction controls introduced by many countries.
- Regulatory reforms introduced to manage cross border betting in Europe.
- Actions undertaken by sporting bodies to secure product fee rights (eg French Federation of Tennis v Expekt and Unibet of 30 April 2008 and the subsequent dismissal of Unibet's appeal on 15 October 2009).

Implications

The implications of the failure to explore in full the regulatory options available to curb all free riding is that the Commission has developed a public policy and regulatory framework that legitimises rather than deals with free riding. The following issues arise:

- The recommendation in Chapter 12 of the Draft Report that the Interactive Gambling Act 1991 (Cth) (IGA) should be repealed is premature. A review of the IGA's ability to act as both a domestic and international regulatory tool is necessary
- A regulatory framework that deals with all elements of free riding should be developed by the Commission.
- The international application of product fee regimes should be further explored including the application of inter-country agreements on product fees similar to arrangements that deal with double taxation between Australia and various countries.

Issue 7

The Commission has incorrectly asserted that TABs have market power and that this market power has resulted in poor outcomes for consumers and for racing industry funding.

The Commission has incorrectly formed the view that TABs have market power.

The Commission's use of the word TAB and totalisator interchangeably makes it difficult to interpret whether the Commission believes totalisators have market power or TABs, who operate also as fixed odds corporate bookmakers on racing and sport and oncourse bookmakers, have market power. Neither notion can be supported.

Totalisators have competed with bookmakers on racecourses for over 100 years. Set out in Confidential Exhibit 7.1 is a snapshot of the competitive environment that existed oncourse over the Melbourne Cup Carnival in 2009.

Exhibit 7.1 (Confidential) – Oncourse sales over Melbourne Cup Carnival 2009

[Confidential information has been removed]

There is little evidence in this data that monopoly rents have been or are being extracted by totalisators (noting that uniform takeout rates apply to all totalisator betting whether conducted on or offcourse).

TABs have consistently provided oncourse wagering services in competition with bookmakers since their formation. We are not aware of any evidence that demonstrates a significant shift in takeout rates or a reduction in oncourse totalisator volumes since totalisators entered the offcourse market.

Confidential Exhibit 7.2 shows that there is effective competition in the sportsbetting market.

Exhibit 7.2 (Confidential) – Sports Betting Online

[Confidential information has been removed]

In the offcourse environment, the development of telephone and internet betting has significantly impacted exclusive TAB licence arrangements:

- In any retail venue customers can make use of the betting facilities and information provided by the TABs but place bets with a corporate bookmaker or betting exchange using their mobile phone.
- In the home, customers can access racing and sport vision through Pay TV and free to air broadcasts and wager over the internet or by telephone with their preferred wagering operator.

In considering the competitive market for offcourse wagering services, turnover relating to customers with whom corporate bookmakers refuse to bet, and bet back revenue from corporate bookmakers should be eliminated. If this is done we estimate bookmakers and betting exchanges represent approximately **[Confidential information has been removed]** of the competitive offcourse market. Totalisators compete with each other for the remainder, further demonstrating the absence of market power. This is demonstrated in Confidential Exhibit 7.3.

Exhibit 7.3 (Confidential) – Relative market share of customers for which corporate bookmakers, betting exchanges and totalisators actually compete

[Confidential information has been removed]

It should also be noted that on 18 August 2009, the ACCC granted informal merger clearance in respect of the potential acquisition of Tote Tasmania by Tabcorp. This decision is inconsistent with the view that TABs have market power. In its media release, the ACCC noted the following factors as relevant to the conclusion that the proposed acquisition would be unlikely to substantially lessen competition in a national wagering market or a national sports betting market:

- The presence of a number of alternative suppliers of wagering and sports betting services, including other corporate bookmakers and other state based totalisators; and
- The transparency of pricing, and the ability of punters to readily compare odds between the totalisator and corporate bookmakers.

The Commission has incorrectly concluded that TABs/totalisators' market power has led to bad outcomes for consumers.

Customers of Australian totalisators receive a level of wagering service unparalleled in the world. Consequently, we are extremely disappointed that the Commission has provided no evidence to support the claim that totalisators' market power has led to bad outcomes for consumers, only some opinions from a range of commentators and vested interests.

Exhibit 7.4 describes the innovations introduced by Tabcorp into the wagering market in 2008/09. Tabcorp introduced 50 new initiatives in this year and has introduced 150 over the past three years.

Exhibit 7.4 – Tabcorp wagering innovations for 2008/09

New Product	New Distribution Arrangements	Structural Change
<ul style="list-style-type: none"> • Big 6 launch • Quaddie quickie • Good Friday opening • Footy season combo • Fixed odds racing expansion • Trackside legends • 20,000 new sportsbetting markets • In the run sports Betting • Cup combo • Expanded first 4's • Singapore, Malaysian & French racing • South African co-mingling & expansion 	<ul style="list-style-type: none"> • Launch of tab.mobi • Launch of tab active • Launch of TAB in your backyard • VRC contract for Southern Cross TAB • Tablette & Tabookie expansion • Electronic wallsheet technology developed • 42 new TAB venues • New EBT developed and rolled out • 126 retail refurbishments • New agents contracts implemented • Roll out of The Oracle tipping service • Tab Star incentive scheme for agents 	<ul style="list-style-type: none"> • Launch of Luxbet • National launch of TAB Sportsbet • New pooling arrangements with RWWA & ACTTAB • Sky Racing rebranding • New racefields agreements (72)
New Pricing Initiatives	New Sponsorships	New Marketing Initiatives
<ul style="list-style-type: none"> • Jackpot Saturdays • Power Pays (Jan – March) • One off sportsbetting price promotions • Golden Daily Double days • Account fees dropped for account customers • Credit card fees eliminated • Improved premium customer offer 	<ul style="list-style-type: none"> • Cranbourne, Warrnambool, Mornington, Bendigo and 13 other raceclubs • Stawell Gift • Collingwood & Richmond football clubs • Tabcorp Park Melton • TROA & Inglis • St George, Penrith & Roosters Rugby League clubs 	<ul style="list-style-type: none"> • Account opening drive on course during Spring Carnival over 3,000 new accounts opened • Betting prompts on Sky Channel • Punters clubs launched • Fox Sports & Channel 9 sportsbet odds promotions • Allform offer to account customers • The latest re-launch • Star Stable competition launched • New how to bet guides developed

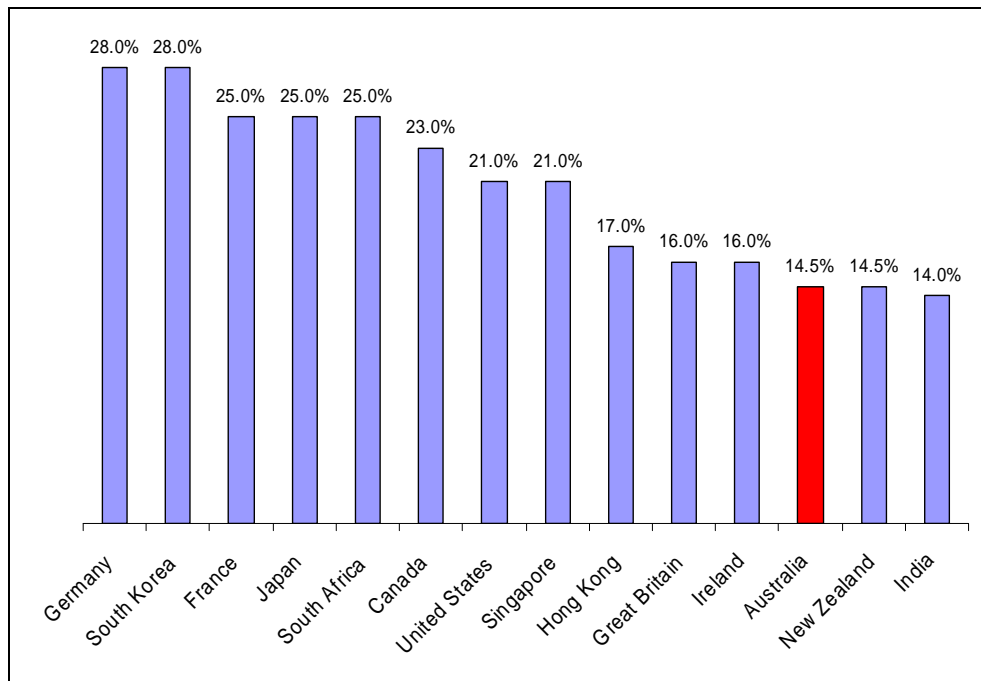
In addition, we have set out in Confidential Exhibit 7.5 Tabcorp’s position as market leader in wagering innovation in Australia.

Exhibit 7.5 (Confidential) – Tabcorp’s innovation leadership in Australian wagering

[Confidential information has been removed]

Australian totalisators have one of the lowest in the world, demonstrated in Exhibit 7.6.

Exhibit 7.6 – International Comparison of Totalisator Take-Out Rate - Win



Source: International Federation of Horseracing Authorities

In terms of customer service levels, independent research conducted by Millward Brown indicates high levels of customer satisfaction with the major totalisators relative to corporate bookmakers. This is demonstrated in Confidential Exhibit 7.7.

Exhibit 7.7 (Confidential) – Customer Satisfaction Rates (Overall how satisfied are you with?)

[Confidential information has been removed]

It is incorrect to treat wagering customers as an homogenous group with price being the primary driver of their wagering activity.

Significant segmentation exists in wagering customers. Confidential Exhibit 7.8 demonstrates this breakdown between account, retail and oncourse customer segments.

Exhibit 7.8 (Confidential) – Tabcorp Turnover and Revenue by Customer Segment

[Confidential information has been removed]

Customer demands vary significantly between market segments. For most segments, price is not a determining factor, with customers attributing value to different service elements. Confidential Exhibit 7.9 demonstrates these sources of utility.

Exhibit 7.9 (Confidential) – Wagering customer utility

[Confidential information has been removed]

In assuming price is the key driver for most wagering customers, the Draft Report ignores a large segment of wagering customers for whom it is not. Consequently, the draft findings and recommendations are geared to a small segment of wagering customers who are price sensitive and from whom corporate bookmakers are willing to accept bets. These customers are not large in number.

The Commission is incorrect in its assertion that corporate bookmakers offer cheap and innovative wagering products across Australia and, as a result, have rapidly increased their market share.

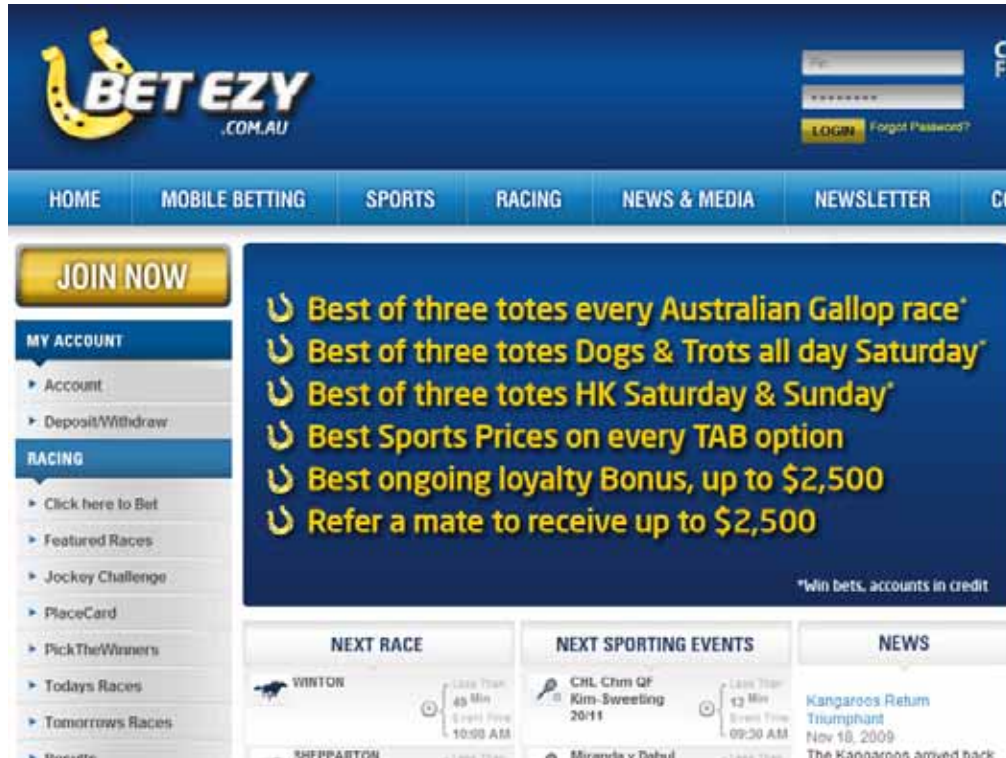
In contrast to the extensive list of product innovations above, the single innovation that has brought the greatest component of wagering growth by corporate bookmakers in the last seven years is tote odds betting. We have set out in Confidential Exhibit 7.10 the level of tote odds betting in the first full year of operation of Tabcorp's Northern Territory corporate bookmaking business, Luxbet.

Exhibit 7.9 (Confidential) – Luxbet tote odds sales for FY09

[Confidential information has been removed]

Tote odds betting involves free riding on the products, services, systems, technology and integrity of totalisators. It involves much more than price duplication. An example of a corporate bookmaker's website featuring a tote odds betting offer follows.

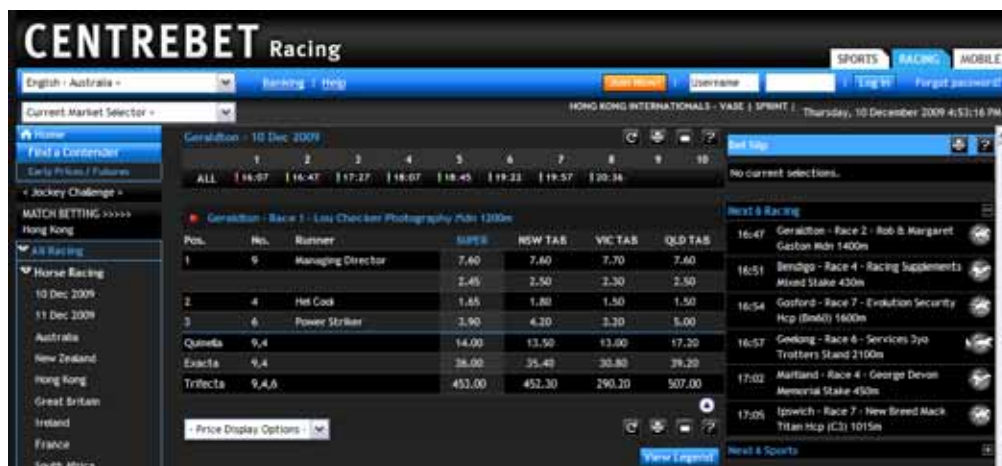
Exhibit 7.11– Tote odds betting dominates corporate bookmaker website



(Source: www.betezy.com.au)

Corporate bookmakers also copy the prices on totalisator' exotic bets such as quinella, exacta and trifecta, daily double, extra double, quadrella, etc. The extract below taken from the Centrebet website demonstrates this.

Exhibit 7.12– Corporate bookmakers now copy totes' exotic bets



(Source: www.centrebet.com.au)

Areas in which corporate bookmakers may be considered innovative are generally areas the totalisators are prohibited from betting on, for example, novelty events. In Victoria and New South Wales, for example, totalisators are precluded by regulation from offering betting on many such products.

The following extract from the judgement of R G Comrie, Acting Judge of Appeal Supreme Court of South Africa, regarding bookmakers accepting 'exotic' bets with winnings dependent on tote's published dividend for the same bets, provides another perspective of the copying of totalisator products by bookmakers.

[21] The exotic bets in question thus depend not just on the published tote dividends. They depend on the respondent's totalisator, and its acknowledged reliability. Without the respondent's tote, its proper operation and its published dividends, the appellants' exotic bets could not be laid. Nor could winnings (dividends) on exotic bets be paid by the appellants to successful punters. In this way, as it seems to me, the appellants appropriate unto themselves both the respondent's product and its performance. The appellants achieve this outcome without any significant expense or effort on their part. The respondent may or may not retain any property or 'quasi-property' in its published results; but its business system is of great value and the respondent surely has property therein....

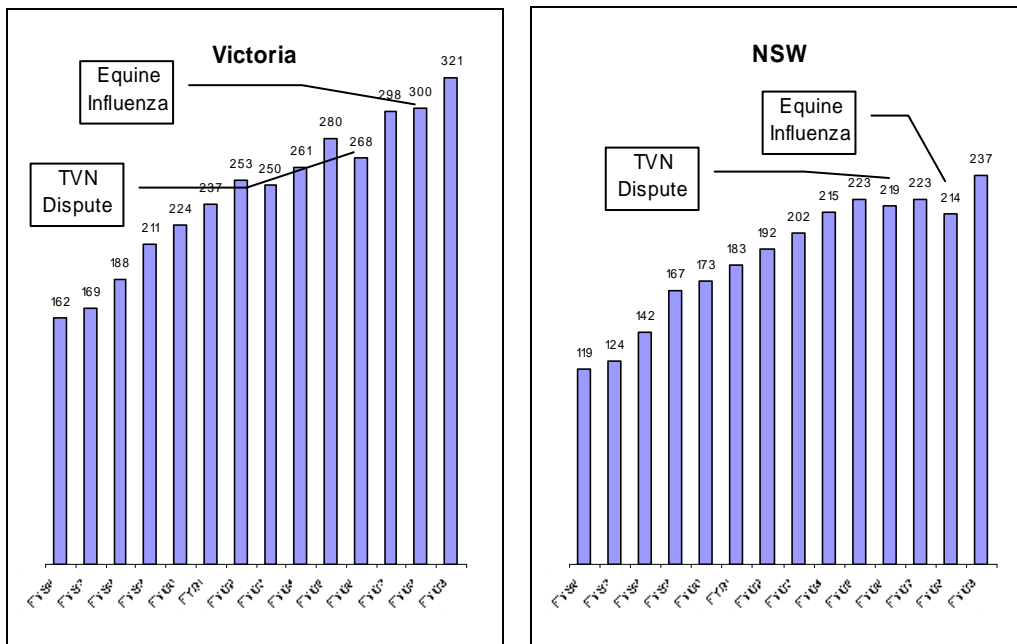
[26] ...The respondent does not claim invention, for what that might be worth. It does not assert, nor can it assert, some kind of monopoly over the totalisator system in South Africa. It simply says to the appellants: If your licence permits you to accept exotic bets, so be it; but then please use your own business system, at your own expense, and not ours. Reduced to these essentials the parasitic nature of the appellants exotic bets is in my view plainly evident. There is no fear that the parasite will kill the host. But competing on these uneven terms, there can be little doubt that in accordance with the laws of nature and business, the parasites will likely harm the host, as parasites usually do.

Source: Case number 152/04 Supreme Court of Appeal of South Africa, 1 June 2005

The Commission is incorrect in asserting that the traditional funding model has been detrimental to racing and wagering in Australia.

Racing industry returns are not in decline. Exhibit 13 is the level of industry funding growth delivered by Tabcorp and TAB Ltd to the Victorian and NSW racing industries since privatisation. In both cases returns to the industry have grown significantly, other than in years impacted by vision disputes and equine influenza.

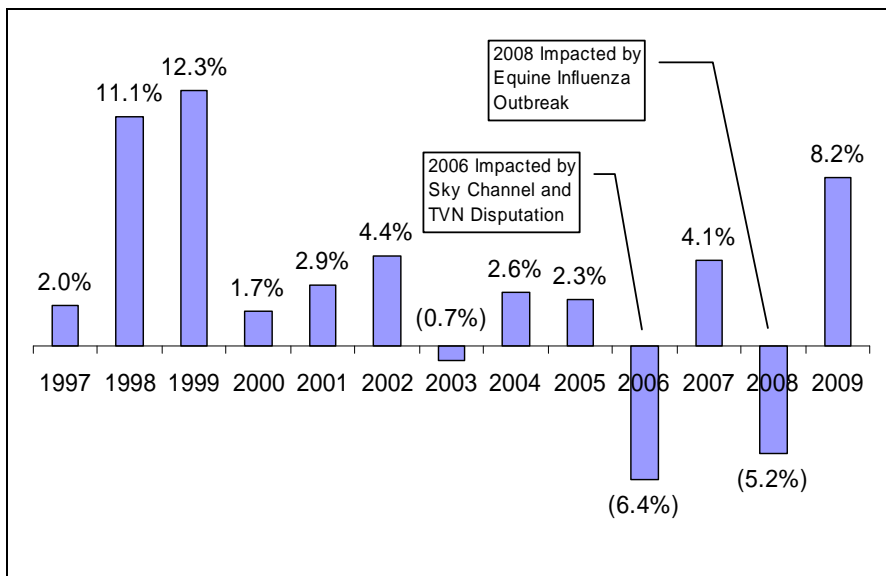
Exhibit 7.13 – Tabcorp Funding to the Victorian and NSW Racing Industry FY94 to FY09



Source: Tabcorp management information

Racing Industry returns have grown consistently in real terms. Exhibit 7.14 sets out the annual growth rate of Racing Industry in excess of CPI.

Exhibit 7.14 – Growth Rate of Racing Industry Funding Payments by Tabcorp and Tab Limited in Excess of CPI



Source: Tabcorp Management Information and Australian Bureau of Statistics CPI Data

The Draft Report suggests that wagering is in decline.

The level of wagering is not in decline. Returns in recent years have been distorted by vision disputes, equine influenza and unusual events such as World Youth Day in NSW. We have provided in Confidential Exhibit 7.15 the level of growth in all forms of wagering for the past six months. The data indicates, contrary to the non-fact based opinions of commentators referred to in the Draft Report, that wagering is growing strongly and is currently achieving growth rates superior to other forms of gambling.

Exhibit 7.15 (Confidential) – Tabcorp and Tab Limited Turnover Performance YTD to 12-Dec-09

[Confidential information has been removed]

Supporting this view, ratings figures from OzTam indicate that the racing PayTV channel, Sky Channel, is consistently the number one channel on Saturday afternoon between noon and 5.30pm for men 40+ and consistently in the top three for men 25+.

Within the Draft Report, the views of commentators with vested interests have been used to paint a picture of wagering and parimutuel betting that is inaccurate and misleading.

Significantly, these commentators and the Draft Report do not recognise the TABs' providing Australian wagering consumers with:

- Retail facilities unmatched by any other wagering operator in the world.
- Up to 14 different access technologies as a means of placing a wager from interactive betting through PayTV to self service and direct telephone technologies to the internet.
- The co-ordinated provision of racing vision consisting of over 60,000 individual races which is available free to consumers in commercial venues and available into homes via PayTV.
- Free racing form services through metropolitan daily newspapers in every state.
- A comprehensive variety of local and international product with expanded pools at international and domestic levels through pooling arrangements.
- Flawless processing of bets with systems investment enabling the processing of 700 bets/second on Melbourne Cup Day.

The racing industry has also been provided with a funding model that has withstood the introduction and expansion of casinos, poker machines and lotteries in the Australian market; the catastrophic impact of equine influenza; and the introduction of higher levels of wagering competition to deliver consistent real revenue growth.

Tabcorp recognises that some of the innovations in recent years have been stimulated by the increasingly competitive wagering environment (between totalisators as well as bookmakers and exchanges). However, we cannot support the view the current market can be described as one where totalisators or TABs have market power or where consumers or the racing industry are receiving unfavourable outcomes.

Implications

The Draft Report contains a flawed analysis of market power of the TABs and the current quality of consumer and industry outcomes, to justify a non-interventionist approach to free riding. The following issues should be addressed:

- Has free riding resulted in a distortion in the provision of services to consumers? Are price discounts, inducements and other consumer services of some operators being funded by the avoidance of industry funding obligations? If so, will the Commission recognise that rectifying free riding will necessarily involve some consumer detriment?
- The Commission address free riding and the level of competition in the wagering market as two separate issues. A level playing field should first be established between the different forms of betting, then between the different types of operators, before considering the value and the extent of competition which is sustainable in the market.
- The direct consequences of the Commission's findings and recommendations on the current level of service provided to the Australian wagering consumer need to be evaluated, particularly the impact of a reduced level of totalisator betting.

Issue 8

The Commission's analysis of price elasticity and the utility of price versus other wagering factors is not complete.

The Commission has referred to limited research being done to test price elasticity (page 13.10) but has then said the majority of industry funding comes from monopoly rents extracted by the TABs from consumers, with higher margins and lower volumes than would otherwise have been the case.

Tabcorp has extensive information relating to price elasticity drawn from direct experience with price discounting that has been conducted across various product types in recent years. An analysis of this elasticity is included as Confidential Exhibits 8.1 and 8.2.

Exhibit 8.1 (Confidential) – Elasticity of Demand for Totalisator Win Betting

[Confidential information has been removed]

Exhibit 8.2 (Confidential) – Summary of Tabcorp Price Promotions as Data for Determining the Elasticity of Demand for Totalisator Wagering Products

[Confidential information has been removed]

This analysis demonstrates that lower margins will marginally increase wagering sales, however this increase will be significantly less than required to offset the racing industry's immediate income loss.

There are other factors associated with totalisator betting beyond price that have not been adequately recognised in the Draft Report. For example, customers derive utility from the following aspects of totalisator betting:

- The integrity and regulatory oversight of the operation of the totalisator.
- The true, non-distorted market generally created by large pools.
- The fact that totalisators do not reject winning customer's bets.
- The convenience and familiarity of totalisator betting.
- The availability of exotic bet options, and related jackpots.
- Loyalty and other customer services employed by totalisators, including vision and form services.

Implications

The Draft Report's analysis of price elasticity is superficial and proposes significant reductions in totalisator take out rates and margins without any justification. Tabcorp's data indicates that the Commission's recommendations will not achieve the envisaged consumer outcomes and will have dramatic consequences for racing industry funding. We recommend the following actions be undertaken before the final report is delivered:

- A detailed assessment of Tabcorp's data on price elasticity and the impact of competition on parimutuel returns.

- A sensitivity analysis of the consequences of a migration away from totalisator betting on industry funding and consumer outcomes.
- A review of the Commission's recommendations on tote odds betting, exclusivity, product fees and taxation given the outcomes of the analysis conducted.

Issue 9

The Commission's contention that the correct industry size is that which most closely represents wagering consumer preferences for the number, frequency and quality of races and the prices they are willing to pay for them is flawed.

The Racing Industry exists as a sport to meet the collective needs of its participants. Unlike gaming products, it is not provided only to satisfy the needs of gamblers.

We have covered in Issue 3, the incomplete analysis of the value chain of the racing industry and the relative importance of owners, who in fact provide a greater contribution to the funding of the industry than wagering consumers.

The number, frequency and quality of races is determined by a range of factors that include:

- The available horse population segmented by grade, age and required race distance.
- The availability of prize money (for example, the lack of available prize money was given as the reason for the reduction in races conducted during the Melbourne Cup Carnival).
- The needs of owners who seek races in their geographic areas.
- The needs of trainers who wish to prepare their horses' programs which will involve campaigns of three to ten starts over varying distances with runs spaced every two weeks.
- The availability of racetracks and the need to allow recovery time between meetings.
- The needs of breeders, who contribute to the determination of "black type" races on the racing calendar.
- The needs of sponsors (eg Magic Millions race day on the Gold Coast).

Optimising industry returns from wagering is a factor in developing the race program but racing is primarily a sport and therefore, a broader range of interests are at play. The logic applied to sports programming in the Draft Report would, if extended to other sports, mean that the Australian Cricket team would play an Ashes Test Series every summer, the AFL would extend its season so that Collingwood and Carlton could play every month, and the Soccer World Cup would be held annually.

Racing provides its product into a competitive market.

Our response to Issue 7 identified flaws in the Commission's view that TABs have market power and these flaws also exist in the unsubstantiated contention on page 13.13 that the racing industry's size should not be based on protecting the market power of incumbents.

Racing provides its product into a competitive wagering and gambling market. All operators including TABs have the opportunity to offer wagering on different codes of racing, on domestic or international racing, on sporting events, on animated racing, and on novelty events such as elections. All racing codes have the opportunity (within some contractual constraints) to flex their program and adjust the number and type of racing provided.

Market forces determine the value the racing industry derives from its program and the volume of racing. If racing's returns diminish, then less will be provided to owners in the form of prize money, the horse population would reduce and the industry will naturally adjust its size. Success of the current funding model does not legitimise free riding.

There is no evidence to support the contention that Australia has too much racing.

The Commission has drawn on the unsubstantiated opinions of a small number of media commentators to contend that Australia has too much racing or "racing that nobody wants". These views are not in accordance with customer demand.

Tabcorp's data indicates that demand for racing product is increasing rather than decreasing as evidenced by:

- The launch in March 2010 of two new racing vision channels on the PayTV platform to further extend the wagering coverage of race meetings.
- The considerable growth in wagering on imported racing (refer Exhibit 1.8) demonstrating a wagering demand for racing product beyond the capacity of the local industry to supply.
- The expansion of thoroughbred racing under lights at night in a number of states.

Whilst the quality of service consumers receive in the offcourse environment has led to a stagnation or decline in racecourse attendances, this should not be confused with the strong and growing demand for the race wagering product itself.

Implications

The Commission has sought to criticise the current industry funding arrangements and the size of the racing industry which is supported by them, in order to legitimise free riding for the benefit of wagering consumers, and new entrants. Such findings are flawed and the Commission should:

- Reassess its position on the relative size of the racing industry against its terms of reference.
- Determine the value to the racing industry of correcting free riding versus the impact of legitimising free riding distortions to deliver unsustainable consumer outcomes.
- Reassess its position on industry funding models by treating racing as a sport rather than as simply a wagering opportunity.

Issue 10

The Commission's conclusions and recommendation regarding Sky Channel are incorrect and are not capable of implementation.

The Draft Report does not recognise that Australia has the best race broadcasting service in the world.

Australia's broadcasting model is the world's best, successfully driving wagering revenue and consequently, racing industry growth.

The relationship between the wagering and broadcasting operator provides incentives to maximise racing industry distributions through the optimal presentation of wagering product. This can best be demonstrated by the scheduling activity and through the growth in import of international race product, facilitated by Tabcorp.

Competition issues with respect to Sky Channel have already been reviewed

The ACCC is already aware of the competition issues arising from the broadcast of racing and has looked at these issues on several occasions. Most relevantly, the ACCC considered Tabcorp's ownership of Sky Channel in its determination of the applications for authorisation of a Memorandum of Understanding (**MOU**) between Sky Channel, Tabcorp and ThoroughVision Pty Limited (**TVN**) in 2007. The MOU sets out the commercial terms between Sky Channel and TVN for the sharing of thoroughbred race broadcasting content and provided for the end of the split vision dispute.

In connection with this authorisation application, submissions were made about Tabcorp's ownership of Sky Channel. The ACCC noted that Tabcorp's ownership of Sky Channel provides Tabcorp with potential for a competitive advantage relative to other wagering providers. However, the ACCC did not consider it necessary to impose conditions on the authorisation and made no further comments on this issue. In addition, the ACCC did not express any concerns about Tabcorp's ownership of Sky Channel in its public competition assessment of the proposed acquisition of UNiTAB Ltd by Tabcorp in November 2006.

The ACCC has also had the opportunity to consider Tabcorp's ownership of Sky Channel in the context of the Australian Hotels Association's applications for authorisation to conduct collective negotiations with providers of broadcasting and wagering services and Clubs NSW's collective bargaining notification to collectively negotiate with Tabcorp and Sky Channel. In each of these cases, the ACCC did not raise concerns about Tabcorp's ownership of Sky Channel.

The Australian Government does not have the power to formally request the ACCC to examine the ownership arrangements of Sky Channel.

Draft Recommendation 13.2 states that the Australian Government should request that the ACCC examine any adverse implications for competition associated with the ownership arrangements for Sky Channel.

The *Trade Practices Act 1974* (Cth) (**TPA**) does not contain any provisions pursuant to which the Australian Government could formally direct or require the ACCC to examine any competition issues associated with Tabcorp's ownership of Sky Channel. In particular:

- While the Minister may require the ACCC to hold an inquiry into specified matters under s 95H of the TPA, that section does not allow the Minister to require the ACCC to hold an inquiry into general competition issues relating to a particular industry or to the ownership of a particular asset or business.
- Section 29(1) of the TPA allows the Minister to give the ACCC directions connected with the performance of its functions or the exercise of its powers. However, s 29(2) of the TPA specifically prevents the Minister from giving directions to the ACCC relating to Part IV of TPA.

Implications

The Recommendation with respect to Sky Channel ignores previous investigations into this matter and is not practical and therefore should be deleted.

Issue 11

The Commission's analysis of the gentlemen's agreement and existing product fee arrangements is inaccurate and misleading.

The Commission's description of the gentlemen's agreement is inaccurate.

TABs are not and never have been party to a 'gentlemen's agreement'. The terms of the so-called 'gentlemen's agreement' are not precisely known. It is Tabcorp's understanding that it was a general understanding between racing authorities, however, any agreement was not aimed at conferring any advantage to TABs.

Specific errors that should be rectified are as follows:

- Betting on interstate racing has been conducted by all wagering operators (bookmakers, corporate bookmakers, exchanges and totalisators) not primarily by TABs as contended.
- The gentlemen's agreement did not provide "that TABs could accept wagers on interstate racing without paying for the privilege". TAB's funding arrangements with their own local racing industries incorporate substantial fees for provision of the total racing product from all States. The gentlemen's agreement gave racing authorities the right to provide the total racing product for all States to their local wagering operators and extract fees for doing so.
- Rather than receiving an advantage, totalisators were largely discriminated against in terms of product fees as local racing authorities allowed bookmakers, corporate bookmakers and betting exchanges to access all Australian product with little or no charge.
- The gentlemen's agreement did not involve any agreement or understanding between TABs that they would not compete for customers outside their territory. The introduction of phone and internet betting has seen competition between totalisators escalate.
- The introduction of race fields legislation did not completely end the so-called gentlemen's agreement provisions:
 - The initial race fields decisions in Victoria accommodated concessions that reflected the contributions to the cost of racing product made by totalisators to the racing industries of their home States and other States and Territories.
 - Commercial contracts between operators and principal racing authorities, the authorities themselves and government legislative provisions have had impacts on the actual burden of race fields fees to different operators.

Other important provisions that are related to the operation of the gentlemen's agreement have been omitted from the Draft Report:

- A nationally co-ordinated race program is developed where principal racing authorities agree not to compete for the available horse population at different times of the year.
- Licensed persons in one state are free to operate, race horses and collect prize money across jurisdictions.

These arrangements confer significant benefits to racing industry participants and wagering consumers.

The Commission's analysis of current product fee arrangements is inaccurate.

The Commission makes several errors, or is now out of date, in describing race fields arrangements across various jurisdictions portraying a greater use of revenue based models than is the case (pages 13.16 and 13.27):

- The industry funding arrangements for NSW and Victoria are incorrectly described and have significant omissions.
- Harness Racing Victoria has a turnover based race fields model as does Greyhound Racing Victoria.
- Tasmania has issued its current race fields approvals without imposing a fee condition.
- Thoroughbreds in Victoria also now charge based on turnover.

We have provided an alternate to the Draft Report's Table 13.2 (page 13.16) that corrects these errors and also highlights the discriminatory burden placed on totalisators by the current implementation of race fields fees, a matter that has been given little attention in the Draft Report.

Exhibit 11.1 – Industry agreements with TABs and product fees under race fields legislation

State	TAB and Racing Industry Funding Arrangement	Product Fee Under Race Fields Legislation for All Wagering Operators		
		Thoroughbred	Harness	Greyhounds
NSW	22% of net revenue 25% of net profit Annual lump sum of \$12m (indexed by CPI)	1.5% of turnover	1.5% of turnover	10% of gross revenue (capped 1.5% of turnover)
VIC	33.1% of net revenue 25% of net profit	Fixed fee (Tab Limited fee calculated on a basis of 1.5% of turnover)	1.5% of turnover for totalisators and corporate bookmakers 0.66% of net customer to betting exchanges	Fixed fee (Tab Limited fee calculated on a basis of 1.5% of turnover)
SA	42% of gross wagering revenue	10% of gross revenue	1.5% of turnover	10% of gross revenue
QLD	39% of gross revenue	1.5% of turnover	1.5% of turnover	1.5% of turnover
TAS		No fee charged to any wagering operator under a current approval	No fee charged to any wagering operator under a current approval	No fee charged to any wagering operator under a current approval
WA		Legislation enacted to enable 1.5% of turnover or the greater of 20% of gross revenue or 0.2% of turnover	Legislation enacted to enable 1.5% of turnover or the greater of 20% of gross revenue or 0.2% of turnover	Legislation enacted to enable 1.5% of turnover or the greater of 20% of gross revenue or 0.2% of turnover

Note 1: Victorian racing industry funding from Tabcorp based on an 18.8% Product Fee and Racing Programme Fee and Marketing Fee of a lump sum amount indexed to offcourse net wagering revenue equivalent to 13.3% of gross revenue.

Note 2: In NSW, Racing NSW has asserted a copyright fee of 3% of turnover where wagering operators do not have a current Race Fields approval in place.

Note 3: The Tasmanian Government is currently reviewing its race fields legislation following the Victorian Supreme Court decision in *Tab Limited v RVL: Tab Limited v GRV* made on 13 August 2009.

Note 4: Western Australian legislation promulgated, with approvals yet to be made.

The Commission’s analysis of uncertainty in respect of a revenue model is inaccurate and misleading.

The analysis of this issue lacks objectivity and is characterised by a reliance on non-fact based opinions and a bias in interpretation favouring new market entrants.

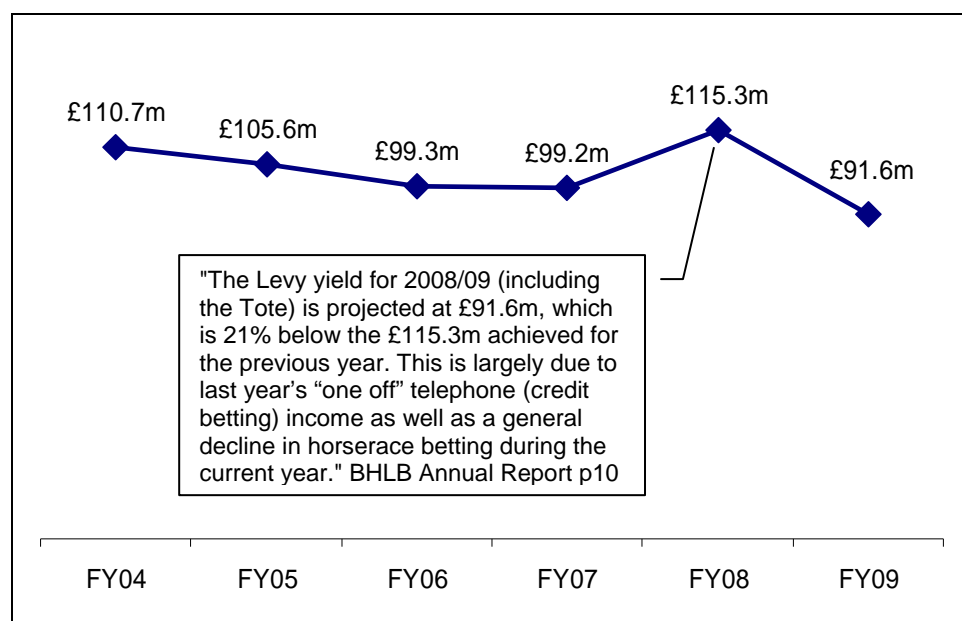
The Draft Report states that there is little evidence to date of margin variability risk impacting those states that have adopted gross revenue. This is not surprising, given the short period of implementation. There is also no evidence to support any contention that margins will not fluctuate over time.

The Commission also refers to the experience of the UK market to justify a linkage between revenue models and favourable industry outcomes.

Unfortunately the rhetoric of the retiring British Horse Racing Levy Board (BHLB), as quoted by the Productivity Commission, does not accord with the recent trend in levies collected.

Exhibit 11.2 sets out a five year summary the BHLB “Levy Yield” as reported on their website. Over the past five years, levies (based on 10% of gross revenue) have fallen by 17% from £110.7m in FY04 to £91.6m in FY09.

Exhibit 11.2 – Five-Year Trend of Levies Collected by the BHLB FY04 to FY09



Source: British Horse Racing Levy Board website, “Levy Collections” at <http://www.hblb.org.uk/document.php?id=12>

The BHLB did receive a one-off increase against this trend in FY08 which was explained as follows:

“The Levy yield for 2008/09 (including the Tote) is projected at £91.6m, which is 21% below the £115.3m achieved for the previous year. This is largely due to last year’s “one off” telephone (credit betting) income as well as a general decline in horserace betting during the current year.”

Financial Summary, BHLB Annual Report p10

The Commission draws on the opinion of an unsuccessful defendant in the Victorian Supreme Court proceedings and the opinion of a media commentator to support its view that TAB Ltd's successful action to have revenue based product fees imposed by RVL and GRV declared invalid, to be a ruling that would also apply to product fees based on turnover.

Tabcorp, as the successful plaintiff, put before the court specific examples of areas where revenue based charges were incapable of certain application. The legal tests to demonstrate uncertainty are very stringent and a material impact must be demonstrated. Davies J held at paragraph 32 of the judgment:

“Uncertainty”, in this context, is not a matter of TAB establishing some ambiguity in expression of the fee condition. “Uncertainty” is concerned with the manner of the exercise of power under s 2.5.19D. If it is not necessary for a controlling body to specify an actual amount, then the controlling body must prescribe the means of calculating or ascertaining the amount. In my view, it is an implicit requirement for the valid exercise of power that an actual amount can be determined from the expression of the fee, if expressed other than as a quantified sum. In other words, as the fee condition creates the liability to pay an amount, there must be certainty about the amount which must be paid. The controlling bodies need to know whether there has been compliance and what they may sue for and the WSP needs to know what it must do to avoid committing an offence. As the statutory scheme operates on an ascertained liability, the amount must be capable of being worked out if it is not specified as an actual amount and this necessarily means that its calculation should not require any exercise of judgment or discretionary element. The requirement of certainty, in my view, is an inherent condition of the exercise of power.

At no time did the Supreme Court consider the issue of whether a turnover based charge was uncertain. The Commission should not infer an outcome from these proceedings that was not addressed by the Court.

Appendix G is a note describing the relevant legal outcomes of the Victorian Supreme Court case which has been prepared by Mr Alan Archibald QC of the Victorian Bar.

Appendix H is a submission provided by Tabcorp to the Tasmanian Government summarising our concerns with race fields fees based on revenue.

Any objective analysis of the Victorian Supreme Court case should conclude that the first time revenue based charges have been challenged, a court found them invalid due to uncertainty.

The final report should also record that following the Victorian Supreme Court judgement, the Tasmanian Government has announced that it is reviewing its race fields legislation.

The Commission's analysis of revenue and turnover based fees lacks objectivity and is incomplete.

The Draft Report concludes a “widespread adoption” of gross revenue models exists but it incorrectly states that this is the basis of race fields payments in Victoria and Tasmania and refers to other payment arrangements which are inconsistent with the form and nature of race fields fees (see Exhibit 11.1).

Taxation payments determined on a revenue basis always deal with aggregated amounts and come with complex legislation, definitions, rulings and a compliance, investigation and enforcement regime to ensure they are not being avoided and are being consistently applied. None of these characteristics or mechanisms apply or have been developed for race fields fees by any racing body.

Agreements between totalisators/TABs and local racing industries also govern a total funding arrangement which deals with aggregated amounts.

As almost all sportsbetting in Australia is done on a fixed odds basis, revenue models for sporting bodies have been employed in some early product fee arrangements. It would be improper to suggest that product fee deliberations are anywhere near the stage of development and consideration as that being considered for the racing industry.

In contrast, the long established method of charging between racing jurisdictions for the import and export of racing product is turnover. This process is the most directly relevant to race fields fees as it represents a supply cost to wagering operators. We have set out in Confidential Exhibit 11.3 the extent of turnover based fees being paid for export and import in Australia. Tabcorp is not aware of any import contract from any jurisdiction (including Hong Kong and the UK) where payments for racing product are made on a revenue basis.

Exhibit 11.3 (Confidential) – Fees paid for export and import of race product

[Confidential information has been removed]

The Draft Report states that “it is evident that turnover based fees will tend to either drive low margin operators out of business, or compel them to change their business models ...”. The report also states, in respect of NSW and Queensland product fees, “If these fees are legally sustainable, they would have the effect of deterring entry by low margin wagering operators, protecting incumbent TABs ...”. No evidence has been presented to support these conclusions.

Product fees have been introduced to address a free riding problem. Any amount of payment under any methodology will impact a free rider’s profitability and may cause change to their business model. Wagering operators have a vested interest in avoiding or minimising these charges. Legal actions have not just been launched by Betfair and Sportsbet in NSW. Tabcorp has also considered whether to take legal action concerning the imposition of race fields schemes in some States and has successfully challenged race fields in Victoria. It remains ready to take such actions where necessary and is aware of other legal actions elsewhere that are already underway. Product fees do not exist for many sports, and we have not witnessed corporate bookmakers volunteering payments to these sports.

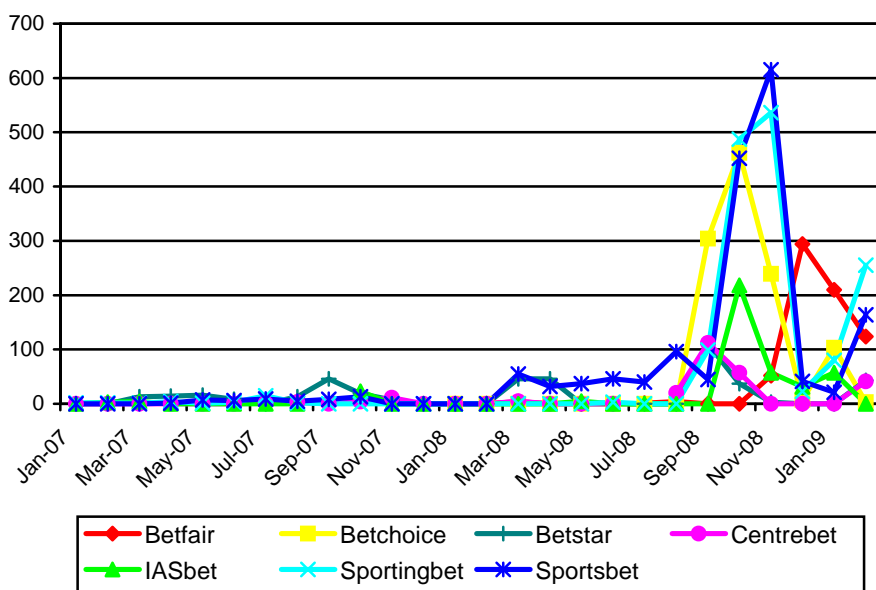
The Draft Report has not considered the significant tax reductions offered to wagering operators in the Northern Territory³ and Tasmania⁴ to offset race field fee impacts and has also not recognised that the Northern Territory Government offered tax concessions to all Northern Territory bookmakers to offset the impact of NSW race fields charges.

³ The *Racing and Betting Amendment Act 2009* (NT) was assented to on 15 December 2009 and will commence on 1 January 2010. It amends section 106 of the *Racing and Betting Act 1983* (NT) to adjust betting tax to compensate for the fact that corporate bookmakers have to

The Draft Report also incorrectly states that the administrative advantages arising from the use of a turnover based model are likely to be small. However, the use of a revenue based model significantly increased the administrative burden of compliance with race fields fees for totalisators. Because of the complex nature of a totalisator's product offering, for any given thoroughbred, harness or greyhound race there may be a multitude of wagering contingencies (for example, win bets, trifectas, quadrellas, jackpots, the BIG6) offered. Dividends paid on any particular contingency may remain unclaimed, be rolled over to another bet type without ever being paid out, be jackpotted, or may be the subject of later premium customer rebates. In addition there are numerous operational difficulties that arise from matters of timing and attribution of revenue items and potential deductions.

The Draft Report does not consider the very significant increase in advertising funded by corporate bookmakers and Betfair following the removal of advertising restrictions (see Exhibit 11.4) nor the fact that Betfair Australia has failed to report a profit after several years of operation, indicating that changes to its business model may be required.

Exhibit 11.4 - Estimated advertising spend by corporate bookmakers and betting exchanges (\$'000)



Source: Nielsen AIS – industry measurement for competitive ad spend

pay race fields fees in other jurisdictions. Under the new system, bookmakers will be required to pay 10% of their gross monthly profits, capped at \$250,000 for each financial year.

⁴ New regulation 5A of the *Gaming Control Regulations 2004* (Tas) has the effect of alleviating the impact of race fields fees paid in other jurisdictions by Betfair, by partially offsetting those amounts from the amounts Betfair is required to pay in its home State.

Finally, the comparison of percentage of gross revenue applicable to a 1.5% turnover charge depicted on page 13.30 is misleading as it incorrectly refers to TABs instead of totalisators and ignores the total value of funding provided by totalisators to the racing industry. An alternative table setting out a more appropriate comparison is in Confidential Exhibit 11.5. This Exhibit shows the Australian totalisator contributions under current agreements with the racing industry (excluding race fields fees).

Exhibit 11.5 (Confidential) – Comparison of current racing industry payments as a percentage of gross margin

[Confidential information has been removed]

The only viability at risk in the race fields proposals of the Commission is the viability of totalisator betting.

Implications

- The Commission needs to assess the use of race fields fees as a mechanism to address free riding and the specific solution proposed for tote odds betting, international product fees and industry contributions.
- The analysis of competition impacts of race fields payments should address the impact on totalisator betting and totalisator pools.
- The Commission should deal with free riding and competition as separate issues rather than a trade-off which will inevitably damage consumers and the racing industry.
- The consumer impact of addressing free riding and removing unsustainable price advantages of new entrants should be quantified and acknowledged by the Commission.
- Unsubstantiated comments regarding “protectionist” race fields policies and new entrants being put “out of business” should be removed.
- Recommendations should be developed to address the discriminatory burden of race fields fees on totalisators who can be in the position of paying twice for the same product.
- Errors in the Commission's analysis of existing race fields arrangements should be corrected and the Commission should reassess its position on turnover based product fees.

Issue 12

The Commission's analysis of an appropriate industry levy is incomplete and the consequences of its proposed charges have not been fully assessed.

The Draft Report concludes that race fields fees should be set at the rate free riders are prepared to pay to avoid them moving offshore with totalisators paying a premium for "retail privileges".

Issue 6 addresses the unjustified threat made by corporate bookmakers that they will move offshore if required to pay more product fees than they wish to.

The issue of an appropriate fee also warrants much more analysis.

Areas that have not been explored include:

- The need for uniform charges. A national price setting body would not be constrained by the constitutional restrictions governing the states. A more flexible scheme that may have different rates for different betting models or different rates for tote odds betting versus fixed odds betting, etc could be determined on a national basis.
- The adjustments necessary to existing funding arrangements between TABs, bookmakers and their local racing industries to avoid paying fees twice.
- The need for governments or regulators to get involved in price setting at all, given the product is being supplied into a competitive market with an absence of market power.
- Victoria is the only jurisdiction to legislate on sports product fees. The arrangements introduced by the Victorian Government have practical implementation difficulties and no analysis of sports product fees has been undertaken in the Draft Report.

The concept of totalisators paying a premium to address some market advantage is proposed without any consideration of the licence fees and taxes paid to governments by totalisators for exclusive licences and the many other comparative advantages enjoyed by corporate bookmakers including credit betting, lower regulatory costs and tote odds betting.

Indicative modelling undertaken by Tabcorp, that can be seen in Confidential Exhibits 12.1, 12.2, 12.3 and 12.4, demonstrates the negative impacts of the Commission's product fee policy.

Based on a single and uniform gross revenue based fee, a uniform state tax rate of 9.09% of gross revenue, and GST of 9.09% of gross revenue, Tabcorp's indicative modelling concludes that:

- A gross revenue product fee of 35.6% would be required to maintain the existing level of racing industry funding, should prices not be impacted.
- A uniform 10% product fee payable to the racing industry would produce a 72% reduction in existing racing industry funding levels from approximately \$927m to \$261, should prices not be impacted.

- A gross revenue product fee of 52.4% will be required to maintain the existing level of racing industry funding, should totalisator pricing falls from 16.7% to 10.0%. The model factors in market growth at a rate which accords to Tabcorp's experience of the elasticity of demand.
- A uniform 10% product fee payable to the racing industry would produce an 81% reduction in existing racing industry funding levels from approximately \$927 to \$177m should totalisator pricing fall from 16.7% to 10.0%. The model factors in market growth at a rate which accords to Tabcorp's experience of the elasticity of demand.

These indicative findings have significant implications for the ongoing viability of racing and wagering, and the consequential impacts on investment and employment.

The analysis demonstrates that tote odds betting cannot be dealt with through a uniform fee as it will:

- Significantly undermine totalisator betting and totalisator pool sizes at a 10% revenue level.
- Remove the incentive to invest needed to operate a totalisator.
- Result in product fee rates that cannot simultaneously be applied to all forms of betting.
- Continue the damage caused by tote pool manipulation.
- Negatively impact the provision of consumer services provided by totalisators.

Implications

- The Commission needs to broaden its analysis of the impact of alternative charging regimes.
- The Commission's final report should include financial modelling of the consequences of its fee policy at various elasticity sensitivities.

Exhibit 12.1 (Confidential) – Financial modelling indicates a race field fee of 35.6% of gross revenue will be required to retain racing industry funding at existing levels under the Productivity Commission’s recommendations without price impacts

[Confidential information has been removed]

Exhibit 12.2 (Confidential) – Indicative financial modelling of the impact of the Productivity Commission’s recommendations (with a 10% gross revenue based race field fee) would lead to a 72% reduction in racing industry revenue without pricing impacts

[Confidential information has been removed]

Exhibit 12.3 (Confidential) – Financial modelling indicates a race field fee of 52.4% of gross revenue will be required to retain racing industry funding at existing levels under the Productivity Commission’s recommendations should the totalisator take-out rate be reduced from 16.7% to 10.0%

[Confidential information has been removed]

Exhibit 12.4 (Confidential) – Indicative financial modelling of the impact of the Productivity Commission’s recommendations (with a 10% gross revenue based race field fee) would lead to an 81% reduction in racing industry revenue should the totalisator takeout be reduced from 16.7% to 10%

[Confidential information has been removed]

Issue 13

Impact of the Draft Report's findings and recommendations need to be thoroughly modelled and explored.

The Draft Report does not include:

- Any analysis or financial modelling by which to assess the ramifications on the racing industry of the proposed recommendations and findings.
- Any assessment on the financial impact on the racing industry of a move to a gross revenue based funding mechanism.
- Any assessment of the financial impact on the racing industry from a reduction in the price of wagering.
- Any implementation process to move from the existing regime of levies, taxes and charges to a harmonised tax regime and industry funding structure.
- Any analysis regarding the broader economic impacts (particularly in regional and rural areas) of the expected 'downsizing' the racing industry.

The impact of these issues, outlined in Issue 12, are particularly relevant given the Racing Industry's economic significance.

In addition, severe negative consumer impacts are anticipated by the significant migration from totalisator to fixed odds betting that will occur if the Commission's recommendations are implemented in their current form. These impacts include:

- A significant segment of consumers who may be excluded from the market.
- A deterioration in consumer wagering services for audio, vision, form and data, or as a minimum, a significant increase in consumer costs for these services.
- The loss of a large and growing export market for wagering and breeding.
- The loss of a variety of pool based exotic products that will be removed from the market as pool size deteriorates.
- The loss of confidence in wagering integrity that is one of the utilities associated with parimutuel betting.
- The loss of wagering from horse owners and participants that will leave the industry as it downsizes.