



# Final Investigation Report – Interactive gambling – Tabcorp Holdings Limited

## GINV-2024-00023

Summary	
Entities involved in the service / advertisement	Tabcorp Holdings Limited
Name of service	Tabcorp
Date service was accessed	6 August 2024
URL	<a href="https://www.tab.com.au">https://www.tab.com.au</a>
Relevant legislation	<i>Interactive Gambling Act 2001</i>
Date finalised	11 November 2024
Finding	Between 27 April 2023 and 24 October 2023, Tabcorp Holdings Limited provided prohibited interactive gambling services to customers in Australia, in the form of an in-play betting service, in contravention of subsection 15(2A) of the IGA by accepting 854 online in-play bets across 69 sporting events.

## Background

1. On 9 October 2023, the Victorian Gaming and Casino Control Commission (VGCCC) notified the Australian Communications and Media Authority (the ACMA) that Tabcorp Holdings Limited (Tabcorp) had self-reported the acceptance of in-play bets.
2. On 20 May 2024, the ACMA commenced an investigation under section 21 of the *Interactive Gambling Act 2001* (the IGA) into the Tabcorp Holdings Limited (Tabcorp) wagering service available at the website: <https://www.tab.com.au>.
3. This investigation considered whether Tabcorp provided a prohibited interactive gambling service, in the form of an online in-play sports betting, to customers in Australia in contravention of subsection 15(2A) of the IGA.
4. The investigation considered the information provided by the VGCCC and additional information provided by Tabcorp to the ACMA.

## The service and licensee

5. The Tabcorp wagering service is provided at <https://www.tab.com.au>
6. Tabcorp is licensed in each state and territory, except for Western Australia.
7. Extracts of the key provisions of the IGA are provided at **Attachment A**.

## Finding

8. Between 27 April 2023 and 24 October 2023, Tabcorp Holdings Limited provided prohibited interactive gambling services to customers in Australia, in the form of an in-play betting service, in contravention of subsection 15(2A) of the IGA by accepting 854 online in-play bets across 69 sporting events.

## Reasons for decision

9. To assess whether the service is provided in contravention of subsection 15(2A) of the IGA, the ACMA considered the following questions:
  - > Is the service a prohibited interactive gambling service as defined in section 5 of the IGA?
  - > Does the service have an Australian-customer link?

### **Is the service a prohibited interactive gambling service (subsection 5(1) of the IGA)?**

10. Subsection 5(1) of the IGA sets out what is a prohibited interactive gambling service for the purposes of the IGA. The key elements of a prohibited interactive gambling service are that:
  - > it is a gambling service as defined in section 4 of the IGA
  - > it is provided in the course of carrying on a business (see paragraph 5(1)(a) of the IGA)
  - > it is provided to customers using certain services, including an internet carriage service (see paragraph 5(1)(b)(i)).
11. The Tabcorp service made available at <https://www.tab.com.au> is a prohibited interactive gambling service, as it is:
  - > a gambling service for the placing, making, receiving or acceptance of bets;
  - > provided in the course of carrying on a business, as evidenced by the provision of the service to the public, with an apparent view to making a profit (evidenced by the requirement to deposit funds as a condition of participation); and

- > provided to customers using an internet carriage service, as evidenced by the fact that the service was accessed using an internet connection.

**Excluded services (subsection 5(3) of the IGA)**

12. Subsection 5(2) of the IGA provides that subsection 5(1) has effect subject to subsection 5(3).
13. Subsection 5(3) provides that for the purposes of the IGA, certain kinds of services are excluded services and therefore not prohibited interactive gambling services.
14. Relevantly, an 'excluded wagering service', as defined in section 8A, is not a prohibited interactive gambling service (see paragraph 5(3)(aa)). This includes wagering services for betting on sporting events.
15. It is not in contention that the services provided by Tabcorp were wagering services which relate to betting on, or on a series of, sporting events (paragraph 8A(3)(a) of the IGA).
16. However, a wagering service for sporting events only satisfies the definition of an excluded wagering service to the extent that it is not an 'in-play betting service' (subsection 8A(3)(b)).
17. Section 10B of the IGA provides that a gambling service is an *in-play betting service* to the extent to which:
  - (a) the service relates to betting on the outcome of a sporting event, where the bets are placed, made, received or accepted after the beginning of an event; or
  - (b) the service relates to betting on a contingency that may or may not happen in the course of a sporting event, where the bets are placed, made, received or accepted.

**Were the bets on the subject event placed, made, received or accepted after the beginning of the sporting event? (section 10B of the IGA)**

18. On 9 October 2023, the VGCCC provided information to the ACMA that Tabcorp had self-reported the acceptance of in-play bets on 5 sporting events between 7 April and 15 May 2023.
19. On 15 March 2024, Tabcorp advised that:
  - > in April 2023, 35 in-play bets were accepted on one event.
  - > between May and October 2023, 828 in-play bets were accepted across 69 events, on 45 individual days.
20. On 5 July 2024, Tabcorp advised 9 in-play bets placed on 1 sporting event on 29 June 2023 were placed via its customer call centre and were not online in-play bets.
21. In summary, between 27 April 2023 and 24 October 2023 Tabcorp provided a service relating to betting on, or on a series of, sporting events. During this period it accepted 854 online in-play bets on 69 sporting events. As it accepted online in-play bets for these events, for the purposes of section 8A of the IGA, the service provided was not an excluded wagering service.

**Conclusion**

22. The ACMA concludes that between 27 April 2023 and 24 October 2023, Tabcorp provided a prohibited interactive gambling service, in the form of an in-play betting service, by accepting 854 online in-play bets across 69 sporting events.

## **Does the service have an Australian-customer link?**

23. To be provided in contravention of subsections 15(2A) of the IGA, the prohibited interactive gambling service must have an Australian-customer link. Under section 8 of the IGA, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.
24. It is not in contention that the customers of Tabcorp services are based in Australia.

## **Tabcorp submissions**

25. On 19 December 2023, the ACMA advised Tabcorp of the information provided by the VGCCC and requested details of the acceptance of the in-play bets.
26. On 31 January 2024, Tabcorp responded that the issue was due to a mix of reasons, including human error, system error and inaccurate information from third-party providers.
27. In relation to some of the events which occurred in April 2023, Tabcorp advised that the in-play bets were accepted due to an automated control in its system not closing betting due to a system error. This resulted in messages not being correctly received from its third-party provider. Tabcorp advised that a technology fix was implemented in October 2023.
28. Tabcorp also advised that all bets were refunded (voided) so that neither Tabcorp nor its customer benefited or gained a financial advantage from these bets.
29. On 26 February 2024, the ACMA requested Tabcorp to provide information about why it took some 6 months (between April and October 2023) for remedial action to be taken and whether any other in-play bets were accepted in that period as a result of the same system error.
30. On 15 March 2024, Tabcorp responded, advising that in April 2023, the system error in question resulted in 35 in-play bets being accepted on one event. Between May and October 2023, the same system error resulted in the acceptance of 828 in-play bets across 69 events<sup>1</sup>, on 45 individual days. Tabcorp provided a list of all in-play bets accepted as a direct result of the system error.
31. Tabcorp further advised that:
  - > as a result of the acceptance of in-play bets on 4 events in April 2023, it conducted an internal investigation and there was also an external investigation by its third-party provider, with each being unsuccessful in identifying the 'root cause'. Further, its third-party provider had advised its other users did not experience similar issues.
  - > following a 'spike' in the acceptance of in-play bets in September 2023<sup>2</sup>, a 'comprehensive investigation' was undertaken by its third-party provider. This identified that its third-party provider was sending messages for time change and live activation simultaneously, instead of sending these as separate messages. This caused the markets for these events to miss the live activation message as Tabcorp systems could not handle receiving the two messages at the same time. As noted above, a technology fix was implemented in October 2023.
  - > in the period May to October 2023, it offered betting on approximately 208,590 events.
32. On 27 May 2024, the ACMA advised Tabcorp that it had opened an investigation into this matter and requested Tabcorp to provide the following information with regards the list of in-play bets detailed in its letter of 15 March 2024:
  - > The scheduled start time of each event.

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<sup>1</sup> Further information was received from Tabcorp on 5 July 2024 advising that previously report 9 in-play bets placed on 1 sporting event on 29 June 2023 were placed via its customer call centre and were not online in-play bets.

<sup>2</sup> 172 in-play bets accepted in period May to August 2023, 387 accepted in September 2023, 269 accepted in October 2023.

- > The actual start time of each event.
  - > The time that online betting was closed by Tabcorp.
  - > The time/s that bets accepted after the actual start time of the events were refunded to customers.
  - > The date the system error was rectified by Tabcorp.
33. On 14 June 2024, Tabcorp provided the requested information. Tabcorp also advised that the technical fix was completed on 18 October 2023 and that due to the complexity of the technical fix update 'there was a small risk of further errors occurring'.
34. The list provided by Tabcorp included 2 errors which occurred on 23 and 24 October 2023, after the technical fix update. This resulted in the acceptance of 13 in-play bets across 2 sporting events. Tabcorp advised that this issue was escalated to its third-party provider as part of the 'fix-feedback cycle process'. As a direct result of this feedback, a further fix was implemented on 15 January 2024 which increased the separation from pre-match to in-play events from 2.25 seconds to 2.5 seconds.
35. On 2 August 2024, staff requested further information from Tabcorp on the list provided due to the scheduled start time and actual start time of the event being identical. Tabcorp responded that due to the nature of tennis match scheduling, it provided estimated time frames for a match to commence, however 'given the fluid duration of tennis matches' the scheduled start time can vary significantly to the actual start time. Due to this, the information provided by Tabcorp was based on the actual start time of the event.

### **Decision**

- > Between 27 April 2023 and 24 October 2023, Tabcorp Holdings Limited provided prohibited interactive gambling services to customers in Australia, in the form of an in-play betting service, in contravention of subsection 15(2A) of the IGA by accepting 854 online in-play bets across 69 sporting events.

# ATTACHMENT A

## Key provisions of the IGA

### 4 Definitions

**gambling service** means:

- (a) a service for the placing, making, receiving or acceptance of bets; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery; or
- (d) a service for the supply of lottery tickets; or
- (e) a service for the conduct of a game, where:
  - (i) the game is played for money or anything or else of value; and
  - (ii) the game is a game of chance or of mixed chance and skill; and
  - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
- (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.

### 5 Prohibited interactive gambling services

(1) For the purposes of this Act, a **prohibited interactive gambling service** is a gambling service, where:

- (a) the service is provided in the course of carrying on a business; and
- (b) the service is provided to customers using any of the following:
  - (i) an internet carriage service;
  - (ii) any other listed carriage service;
  - (iii) a broadcasting service;
  - (iv) any other content service;
  - (v) a datacasting service

Note: This definition relates to the offence provisions and civil penalty provisions set out in section 15 and Part 7A.

(2) Subsection (1) has effect subject to subsection (3).

*Excluded services*

(3) For the purposes of this Act, none of the following services is a **prohibited interactive gambling service**:

- (a) a telephone betting service;
- (aa) an excluded wagering service (see section 8A);
- (ab) an excluded gaming service (see section 8B);
- (aba) a place-based betting service (see section 8BA);
- (ac) a service that has a designated broadcasting link (see section 8C);
- (ad) a service that has a designated datacasting link (see section 8C);
- (ae) an excluded lottery service (see section 8D);
- (b) a service to the extent to which it relates to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001*;
- (ba) a wholesale gambling service;
- (bb) a trade promotion gambling service (see section 8BB);
- (c) an exempt service (see section 10).

### 8 Australian-customer link

For the purposes of this Act, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.

## 8A Excluded wagering service

### Racing

- (1) For the purposes of this Act, a service is an excluded wagering service to the extent to which the service relates to betting on, or on a series of, any or all of the following:
- (a) a horse race;
  - (b) a harness race;
  - (c) a greyhound race;
- so long as the other conditions (if any) determined under subsection (2) have been satisfied.
- (2) The Minister may, by legislative instrument, determine one or more conditions for the purposes of subsection (1).

### Sporting events

- (3) For the purposes of this Act, a service is an excluded wagering service :
- (a) to the extent to which the service relates to betting on, or on a series of, sporting events; and
  - (b) to the extent to which the service is not an in-play betting service;
- so long as the other conditions (if any) determined under subsection (4) have been satisfied.
- (4) The Minister may, by legislative instrument, determine one or more conditions for the purposes of subsection (3).

### Other events or contingencies

- (5) For the purposes of this Act, a service is an excluded wagering service :
- (a) to the extent to which the service relates to betting on:
    - (i) an event; or
    - (ii) a series of events; or
    - (iii) a contingency;that is not covered by subsection (1) or (3); and
  - (b) to the extent to which the service is not an in-play betting service; and
  - (c) to the extent to which the service is not covered by any of the following subparagraphs:
    - (i) a service for the conduct of a scratch lottery or other instant lottery;
    - (ii) a service for the supply of tickets in a scratch lottery or other instant lottery;
    - (iii) a service relating to betting on the outcome of a lottery;
    - (iiia) a service relating to betting on a contingency that may or may not happen in the course of the conduct of a lottery;
    - (iv) a service for the conduct of a game covered by paragraph (e) of the definition of gambling service in section 4;
    - (v) a service relating to betting on the outcome of a game of chance or of mixed chance and skill;
- so long as the other conditions (if any) determined under subsection (6) have been satisfied.
- (6) The Minister may, by legislative instrument, determine one or more conditions for the purposes of subsection (5).
- (7) For the purposes of paragraph (5)(a):
- (a) assume that no conditions have been determined under subsection (2) or (4); and
  - (b) disregard paragraph (3)(b).

## 10B In-play betting service

For the purposes of this Act, a gambling service is an **in-play betting service** to the extent which:

- (a) the service relates to betting on the outcome of a sporting event, where the bets are placed, made, received or accepted after the beginning of an event; or

- (b) service relates to betting on a contingency that may or may not happen in the course of a sporting event, where the bets are placed, made, received or accepted after the beginning of an event.

**15 Prohibited interactive gambling services not to be provided to customers in Australia**

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- (2A) A person must not provide a prohibited interactive gambling service that has an Australian-customer link (see section 8).

Civil penalty: 7,500 penalty units.

- (3) Subsections (1) and (2A) do not apply if the person:

- (a) did not know; and
- (b) could not, with reasonable diligence, have ascertained;

that the service had an Australian-customer link.

Note: In the case of proceedings for an offence against subsection (1), the defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).