



Tabcorp and Entain: the potential impact on Australian pubs and hotels

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The future of commercial contracts with foreign gaming companies in Australia is about to get more interesting. The Australian gambling giant, Tabcorp, is considering instituting proceedings against the Australian Hotels Association New South Wales ('AHA NSW') and an online wagering competitor, Entain, in light of their new agreement.

Tabcorp has an exclusive deal with the NSW government to operate wagering (gambling) in pubs and hotels. Tabcorp believes the recent partnership entered into between Entain and AHA NSW may be a breach of that agreement.

In this blog, we take a look at the developments so far between Tabcorp, AHA NSW and Entain and discuss the possible implications of this action going should it end up in the courts.

The players

There are three key players:

Tabcorp (which operates under TAB) is the only licensed entity in New South Wales to provide off-course wagering services. This is a long-standing arrangement.

AHA NSW represents business operators within the hospitality sector in New South Wales, including about 1,800 pubs and hotels.

Entain is a sports betting and gaming company which operates in retail and online settings.

The 2022 agreement between AHA NSW and Entain

On 6 October 2022, [Entain announced its new 'long-term' agreement with AHA NSW](#), which would promote opportunities between AHA NSW and Entain's various digital entertainment brands, including Ladbrokes and Neds.

This announcement garnered a lot of press and attention considering Tabcorp's long-standing retail exclusivity status in NSW as well as across Australia. Traditionally, pubs and hotels across the country would not be permitted to promote, advertise or otherwise operate competing wagering terminals or business generally.

While the announcement highlighted AHA NSW's commitment to its existing and continuing partnerships with Tabcorp, the AHA insisted this new agreement with Entain (which would help promote new avenues of business through both digital and traditional wagering operations) could co-exist with the Tabcorp agreement.

The announcement also highlighted some essential terms of the Entain agreement, including:

the promotion of digital wagering platforms for Ladbrokes or Neds in-venue;

acknowledgement and commitment of AHA NSW businesses to adhere to Tabcorp's existing partnership agreements, including the relevant exclusivity clause and associated restrictions and obligations between AHA NSW-affiliated businesses and Tabcorp; and

the ability of patrons to place cash bets through TAB betting terminals or via phones using the platform of their choice.

The public announcement also provides that the parties agree not to:

install any physical Entain wagering machinery;

receive any commissions from Entain;

have any Entain employees operating wagering machinery or placing bets on behalf of customers?

The parties also agreed that AHA NSW businesses will not 'advertise to the general public on the exterior of their hotel.'

Tabcorp's New South Wales Supreme Court request for documents

Following the public announcement in March 2023, Tabcorp applied to the Supreme Court seeking access to confidential documents surrounding the agreement between Entain and AHA NSW.

In [Tabcorp Holdings Ltd v Entain Group Pty \[2023\] NSWSC 220](#), the Supreme Court of New South Wales decided to impose a limited discovery order for Entain and AHA NSW to provide Tabcorp with confidential documents, including legal advice leading up to the agreement. This means that Tabcorp is allowed, by court order, to obtain copies of documents surrounding the agreement and that these documents will help Tabcorp to determine whether they will commence legal proceedings against Entain and AHA NSW.

In particular, the court found it appropriate that Tabcorp have access to the following:

Any documents setting out legal advice provided to Entain or AHA NSW in relation to the agreement;

Documents highlighting details about how the Entain lounges or betting areas will be designed and operated; and

Any documents and information related to Entain's statements surrounding its commitment to refrain from interfering with Tabcorp's retail exclusivity.

Tabcorp's monopoly

Tabcorp's issue with the Entain and AHA NSW agreement is that there are limited details available publicly to determine whether legal action is appropriate. Particularly whether, despite Entain's commitment to not interfere with Tabcorp's exclusivity status, the deal nevertheless does infringe on their retail exclusivity.

In the 15 March 2023 Supreme Court decision, Tabcorp argued that the agreement appears to go beyond 'mere advertising' and may have the potential to breach Tabcorp's exclusivity, as the publicly accessible information suggests the deal promotes competing business on 'gambling premises' which contravenes the Unlawful Gambling Act 1998 (NSW).

Tabcorp's current arrangement, consistent with its exclusive status among pubs and hotels across Australia, is that no other betting or wagering company can produce 'gambling premises' within businesses TAB is currently operating.

This recent Supreme Court case also revealed Tabcorp's potential arguments against the parties, including claims of misleading and deceptive conduct; arguing that Entain engaged in misleading conduct by asserting the new deal will not interfere with Tabcorp's retail exclusivity.

However, the ultimate issue for the Supreme Court to decide was whether Tabcorp may be entitled to more information or documents to assess whether initiating proceedings is appropriate. Ultimately, this was granted with exception.

What this decision could mean for Australian pubs and hotels?

At this stage, it is difficult to determine what the future will hold for pubs and hotels should they consider entering into contracts with alternative gambling companies. Certainly, the discovery process leading up to any decisions by Tabcorp to commence proceedings will take some time.

Though proceedings have not yet been instituted, it will be very interesting to see whether Tabcorp decides to initiate proceedings. If Tabcorp chooses to commence proceedings, it will significantly impact subsequent commercial contracts between pubs and hotels and competing online gambling companies across Australia.

Get help from an experienced commercial lawyer

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