



50th Horserace Betting Levy Scheme



Racing's Initial Critique of the Bookmakers' Committee's Recommendations



July 2010

INTRODUCTION AND OVERVIEW

This note sets out Racing's initial comments on the Bookmakers' Committee's ("BC") Recommendations ("Recommendations") for the 50th Horseracing Betting Levy Scheme ("50th Scheme"). Our comments are provided on a paragraph by paragraph basis, responding wherever possible to specific points.

In general, we find the BC document to be extremely narrow in both its scope and analysis. While Levy is collected from a wide range of betting platforms, the document focuses almost exclusively on the LBO market. It therefore fails to reflect the gambling environment in 2010, and it is in particular very disappointing that the BC has not addressed the issue of betting exchanges and offshore betting operators, beyond confirming that both are adversely affecting Levy yield and therefore damaging Racing. Betting exchanges and many significant offshore operators are of course represented on the BC.

The discussion of the Betting industry's capacity to pay is also very narrow, not taking into account the range of income sources bookmakers now benefit from. We reject any direct linkage between Levy contributions and media rights payments by LBOs – they are distinct markets – but would stress here that the picture portrayed is misleading, failing to state that payments by bookmakers to SIS and Turf TV are for a great many products beyond British racing. Accordingly, and working from the BC's own figures, it is demonstrably incorrect to claim that British betting operators now pay more to Racing in levy and media rights than ever, and the justification proposed for a significant increase in LBO thresholds is illogical.

The BC has not kept faith with the new process, having not addressed Racing's submission of March 2010 at all, nor commented on Racing's reasonable needs or what might constitute a reasonable return.

As such, given the high level nature of the Recommendations, the fact that the BC has not submitted its response to Racing's Submission of March 2010, and significantly not yet made available the reports of Ernst and Young and London Economics referred to in the Recommendations, we reserve the right to expand on, delete, amend or add to our comments.

SECTION 1 – EXECUTIVE SUMMARY

(Paragraph) 1.1

Actually, Betting pays less to Racing now than it did three years ago (see 1.10 below). Racing has presented a comprehensive case for the 50th Scheme that justifies a significantly higher Levy return from Betting to Racing.

1.2

Racing's submissions made to Sir Phillip Otton, following the determination of the 47th Scheme, set out our robust rebuttal of the incorrect argument based on bundling payments made under the Levy together with amounts paid to racecourses for the right to provide television coverage of their fixtures in LBOs. Our position remains the same; hence we have not restated it in any detail in this document but we make the following overarching comments:

- The Levy should be universal, payable by all betting operators who advertise to and receive bets from British punters. In contrast, not all betting operators (particularly remote operators) acquire media rights from racecourses, so media rights income is not a substitute for the Levy;
- Televised racing has a strategic value for LBOs by drawing customers in, often to bet not only on racing but other products;
- The importance of racing to LBOs is illustrated by the fact that bookmakers have been prepared to pay higher values for British and overseas, notably Irish and South African, racing;
- The introduction of Turf TV in 2008 broke the previous monopoly position of SIS and introduced competition into the market. Prior to Turf TV's entrance, rights fees paid to racecourses by a monopoly buyer are likely to have been significantly below market value.

1.4

See response to point 1.13

1.5

Based on the quantum and distribution of gross profits per LBO reported for the 48th Levy Scheme, and an unchanged Scheme design, an £8.5m decline in LBO levy receipts appears to have been calculated on a reasonable basis. However, the Levy Board's has forecast a decline in gross win from British racing between the 48th and 50th Schemes, a forecast adopted unanimously by the Board including its BC members. Taking this decline into account, and again using the assumption of an unchanged Scheme design, then we estimate the implementation of the higher thresholds would result in the levy generated from the LBO estate falling by £14m to £40m for the 50th Scheme from the £54m generated by the 48th Scheme; this against the backdrop of further deterioration in the Levy from betting operators moving phone and internet operations offshore.

As stated previously, we do not accept the linkage between Levy payments and media rights, hence the proportions stated are irrelevant.

1.7

We see no relevance, and none is explained in the Recommendations, of the claim that the cost of the levy and TV costs exceeds the EBITDA from British racing. In the large majority of industries the fact that the reported cost of sales of a key, specialised product exceeds its EBITDA would not be considered unusual.

In any event, it is far from clear the basis on which the BC has calculated the EBITDA on British horseracing, we will therefore need to be able to properly examine the data used in due course. However, even at this stage there are a number of clear and fundamental errors, namely:

- TV costs – we assume the amount included for TV costs in the “Levy + TV Costs” bars is the TV cost set out in Figure 9 (under 4.30); however, as we discuss later, it appears the BC have incorrectly allocated all the charges from SIS and Turf TV to the cost of British racing. Given these charges are for the provision of a broad range of LBO services encompassing British racing, overseas racing, greyhound racing, virtual racing (horses and greyhounds), number games, lotteries and general sports betting opportunities etc, this is a clear overstatement.
- No consideration appears to have been made for the fact that SIS is over 50% owned by Ladbrokes, William Hill and Fred Done, who as shareholders have

benefited from the substantial profits made by SIS in recent years. Between 2005 and 2009 (March year ends) SIS made a cumulative EBITDA of £150m. In the last two years, SIS has paid cumulative dividends of over £29m and has purchased in cash the outside broadcast business of the BBC and yet still retains cash reserves of over £30m. SIS has diversified its business but bookmaker-related services still form its biggest revenue source. Any payments made to SIS by the bookmakers need to consider this shareholder relationship.

- It is not clear from Figure 1 as to the source of the Levy data. No year between 2000 and 2009 shows a Levy return of over £100m, which is incorrect. Yet the figures are also too high to represent Levy from LBOs only. We require confirmation of what numbers have been used.
- The analysis in Figure 1 offers no visibility as to how the EBITDA from British racing has been calculated. These underlying assumptions should be shared with Racing so we can evaluate their reasonableness, or otherwise.

1.8

The Recommendations make no recognition of the substantial work of Sir Phillip Otton in looking at capacity to pay and in particular the specific wording of the statute. The BC's extremely narrow analysis of capacity to pay ignores the existence of substantial machine and other income enhancing capacity to pay.

Minimal data or discussion of the current and historical levels of bookmakers' broader profits is given despite the acknowledgement of substantial product crossover (as discussed in Section 4 of the BC document). Racing's Submission provided a brief overview of the growth in the British Betting Industry's profits, setting out the much increased aggregate earnings before interest and tax of the 'Big Three' bookmakers in 2001, 2008 and 2009 but did not discuss it further as it was considered appropriate for the Betting industry to address this issue first. We assume the submissions prepared by E&Y and London Economics will have properly addressed this.

1.8.1

The BC should acknowledge that their chosen mechanism to calculate Levy payments, a share of gross profits, automatically accounts for a reduced capacity to pay if betting activity reduces, either through decline in interest, or through poor economic conditions leading to lower disposable income for the consumer (as per 1.8.3). A gross profits Levy removes per se the possibility of Levy payable being anything other than proportionate, equitable and fairly reflecting the bookmakers' capacity to pay.

1.8.2

The additional costs arising from providing televised racing to LBOs referred to as occurring from 2011 is not substantiated. There is no analysis of the impact of the changing pricing policy of SIS versus the licence fees paid to British racecourses. The new SIS deal with Arena Leisure PLC applies to fixtures from 1 January 2012, and whilst this deal contains certain advances these are purely working capital considerations.

1.8.3

Racing as a leisure activity faces similar challenges arising from the difficult economic conditions as that of the Betting industry. It is inappropriate to use this as a reason for not addressing the serious structural weaknesses in the financial relationship between Racing and Betting.

1.9

This disparity in the respective declines of turnover and gross win highlights the role price competition has had on gross win and hence levy receipts. The major structural issues of offshore operators offering better odds due to lower costs and the impact of exchanges are arguably the two largest factors in this respect; however, increased offers/discounts provided by competing LBO estates has also played a part. Racing has no control over any of these factors but is being penalised for their impact.

1.10

As discussed previously, the BC combination of levy payments and “media rights” is fundamentally flawed on the grounds that the two payments are clearly separate items for separate purposes. Furthermore, the Recommendations include a number of important inconsistencies in the definition of “media rights” and “TV costs” which it wrongly appears to treat as interchangeable.

Putting aside these facts, the BC’s statement that it pays more in levy and media rights than ever is shown to be incorrect based on the table below which has been prepared using the media rights figures provided by the BC and known levy receipts.

Payments from Betting to Racing	2006/7	2007/8	2008/9	2009/10	Total
Media rights ¹ - £m	36	38	53	56	183
Levy - £m	99	115	93	75	382
Total - £m	135	153	146	131	565
British betting industry gross win from British horseracing (£m) ²	1,077	1,230	1,010	900 ³	4,217
Number of fixtures (calendar year)	1,342	1,330	1,424	1,420	

1 Media Rights payments received by racecourses (as at Fig 4; BC to clarify)

2 Economic Impact of British Racing, 2009

3 Estimate based on 48th Levy Yield analysed by platform

The table illustrates that the total amount paid in 2009/10 was £4m less than in 2006/07 and a full £22m less than 2007/08. Furthermore the declines should be viewed in the context of an expanded fixture list, in large part to satisfy bookmakers’ requirements.

1.11

While we will need to confirm the value of Media Rights payments from Betting to Racing contained in this £565m estimate, we assume it is likely to be materially correct. However, that figure alone is meaningless if taken out of context and not set against the estimated £4.2bn of gross win earned by the British betting industry on British racing over the same period.

The use of the media rights in the £565m estimate by the BC contradicts the repeated use of the much higher TV costs and again illustrates the inconsistent and confused approach that the BC has adopted

1.12

Racing’s Submission adopted a comprehensive approach, assessing all Racing’s revenues and costs, in arriving at our proposed reasonable Levy return of £130m - £150m from Racing to Betting. For example, in the Racing Needs approach of the

Submission all revenue sources, including media rights, were fully accounted for in the estimate of the additional net cost of staging additional fixtures.

Racing's broad approach contrasts with the extremely narrow focus of the BC's Recommendations, notably around the Betting industry's capacity to pay which has completely ignored the size and growth in revenue and profits from its non Racing products and barely recognises the existence of non-LBO platforms and operators.

1.13

Based upon a £123,000 threshold and the 48th Levy Scheme LBO gross win bandings, over 7,600 of the 8,150 (93%+) LBOs would pay Levy at an abated rate below 10% of gross win from British horseracing. In a press release to announce the 48th Scheme, the Levy Board announced that thresholds were to assist smaller betting shop operators (as opposed to smaller betting shops).

1.13.1

The preservation of employment is an objective the Racing industry shares with the Betting industry, with Racing employing 18,600 FTEs in addition to a substantial number in directly related horseracing activities and secondary employment (28,800). A fair levy settlement is required to allow both industries to achieve their goals of preserving employment.

1.13.2

BC maintains that British racing is decreasingly significant overall to their business. It follows therefore that thresholds are also less significant to them, yet their impact on Racing is significant.

1.13.3

There is no evidence offered by the BC to support the assertions of 1.13.2 and 1.13.3. Specifically, since the removal of the 'Demand Test', there is no evidence to support the assertion that total Levy from LBO betting operators will be maintained through keeping LBOs open. Indeed, it could be argued that Levy yield would even increase if certain LBOs closed where there has been recent proliferation on certain high streets.

1.13.4

The BC's Recommendations completely ignore the fact that a large majority of those bookmakers benefiting from non-levy paying operations have substantial retail portfolios, and hence often choose to offer more competitive odds and/or offers on their online offerings than in the shops. Around two thirds of LBOs have an online operation that is based offshore and not paying levy. It is clearly wrong to seek to address one structural weakness by worsening another.

1.13.5

As noted above this is a separate issue to the Levy. SIS and Turf TV have paid the racecourses £56m (to be substantiated by BC) because of the value placed on the provision of televised British racing by the bookmakers and which in turn makes up a component (but by no means the entirety) of the services provided to LBOs.

1.13.6

We cannot understand the logic of this statement as it applied to Betting; why would Betting promote British racing under a system of much increased thresholds for LBOs

which for the large majority of LBOs would mean the more successful their promotion was, the greater the marginal cost to the betting operator?

1.13.7

If supporting revenues to HMG is of such importance to the BC, then why have so many of its members moved their online and telephone operations offshore? HMRC figures show that Government's GPT receipts have fallen almost 25%, or £100m, in two years.

SECTION 2 – INTRODUCTION

2.1

The BC failure to comment on Racing's Submission provided to it in March, as the new Levy process clearly required, and failure to provide a comprehensive submission in respect of all categories of leviable bookmakers (eg telephone, internet, betting exchanges etc), is evidence that the BC is not properly committed to the new process. This new process was the only tangible evidence of a review launched of all areas of the Levy in 2008.

2.4 / 5

The changes set out by the BC completely ignore the move offshore of the internet and telephone operations of many of the BC members since the 47th Scheme which has already led to a substantial reduction in levy receipts with further falls to come.

2.6

See comments under 1.9

2.7

As we have noted under 1.10 above, this statement is incorrect and not borne out by figures elsewhere in the Recommendations.

2.8

We consider the Racing's comprehensive Submission clearly sets out why Racing justifies a reasonable return from Betting of £130-150m.

2.9

We have commented elsewhere on why we disagree with the sweeping statements made here.

2.10

We look forward to receiving the reports discussed.

SECTION 3 - ORIGINS OF THE LEVY, ITS BACKGROUND AND CONTEXT

3.1 – 3.4

We disagree with the BC attempt to portray the purpose of the Levy in such a narrow context.

It is of course not the case that the Levy is a means of compensating for loss of attendance, and it is misleading to have phrased it like this. The best description is set out in the Home Office's Quinquennial Review paper of 1999 (the most recent

Government document of this kind), when it describes the Levy as “a mechanism for transferring funds from the business of betting on horseraces to horseracing in a broad sense”.

As per the 1963 Act, the Levy Board is charged with collecting monetary contributions from bookmakers and applying them for purposes conducive to any one or more of: the improvement of breeds of horses; the advancement or encouragement of veterinary science or veterinary education; and, the improvement of horseracing.

The full quote of Mr R A Butler referred to by the BC forms part of our submission and supports the wide purpose of Levy expenditure.

3.5 – 3.8

Whilst it is, of course, true that there is no product as such licensed or supplied by Racing pursuant to the 1963 Act, the rationale for the Levy is clearly that the betting industry should fund Racing out of so much of its business as relates to horseracing. If Racing did not stage the fixtures (“supply the product”), often at the request of the betting industry, then bookmakers would not be able to take best and earn revenues from racing.

3.9

The BC suggestion that Racing is asking for a “*certain sum to be paid from bookmaking to Racing*” is inaccurate. Racing’s Submission sets out that a reasonable return from Betting to Racing should be between £130-150m, and that the 50th Scheme should be designed such that there should be a reasonable expectation of the Scheme yield being within that range. However, under a gross profits basis (or even, to a lesser extent, under a turnover basis) Racing would continue to share the risks and rewards with the Betting industry.

3.13

The references to the Levy Board’s “*ill-conceived financial planning*” and other such comments, seems to suggest that the BC were not at least party to Levy Board discussions on these matters. Furthermore, the historic poor forecasting of Levy yield by the BC and lack of transparency of betting information provided by the BC to the Levy Board has been a key factor in the recent deficits of the HBLB.

It is worthy of comment that the BC members allowed the 49th Scheme to be agreed by the Board based on an income forecast for 2010/11 which assumed no further major moves offshore, which they knew to be an incorrect assumption.

Further, our submission does not seek to recover shortfalls in recent years; it is based wholly on a reasonable return going forward.

3.14

This paragraph confirms that, under current arrangements, betting activity through exchanges generates less levy than that through traditional betting operators. Yet the recommendations later in the same document state that there should be no change to the treatment of exchanges. Further, a great number of the overseas operators referenced here are represented on the Bookmakers’ Committee, directly and indirectly.

3.17

We see no reason why there should not be debate in this area. It could be argued that a turnover-based levy would see exchanges contribute equitably, which many betting operators have called for publicly. Under the current gross win model, overall losses at Royal Ascot this year meant that one of the sport's flagship events negatively affected the Levy, and there has in recent years been significant volatility in yield from the telephone betting platform (from high roller activity). All these examples provide grounds to at least reopen the debate as to the most appropriate basis for charging levy.

Equally, there is nothing to say that a turnover based levy would have to be directly passed on to the punter – that is a choice for the bookmaker to make. Ireland has a turnover based betting tax (which is the principal funding mechanism of Irish racing) and the tax is paid by the bookmaker without any direct deduction from punters' winnings or stakes.

3.22 – 3.27

The BC portrayal of the description of the Minister's determination of the 47th Scheme is narrow and misleading.

While a Determination of the 47th Levy Scheme did of course take place in 2007/08, the result was not the setting of a new Scheme, but a rollover of existing arrangements to be accompanied by a full review of a number of issues surrounding the Levy, and a modernisation of its processes.

At the British Horseracing Conference in February 2008, five days after the announcement of the Determination of the 47th Scheme, Gerry Sutcliffe MP, Minister for Sport, said:

"I now appeal once again to both sides to put aside their disagreements and work together to find an alternative to the Levy that suits both parties. That is why I am arranging the first of a succession of meetings through the All-Party Racing and Bloodstock Industries Group to immediately begin the necessary discussions.

I will host the first meeting and although the Terms of Reference are not yet agreed I envisage that it will bring together all interested parties for an honest, wide-ranging discussion about all the issues the racing and bookmaking industries are grappling with, from Turf TV to betting exchanges, the growth in popularity of Fixed Odds Betting Terminals to the growing fixture list. I am delighted that the BHA has agreed to take part in these important talks." (see britishhorseracing.presscentre.com/Press-Releases)

As stated, all issues were to be 'on the table' for discussion. Racing has tried to progress these issues, including the replacement of the Levy with an agreed alternative, through the various reviews since that time. Betting has shown no aptitude for change in any of these issues, most of which remain unresolved today to the detriment of British Racing.

3.31

Whilst there has been much discussion and debate as to why overseas racing was levied directly only prior to the 42nd Scheme, this is not relevant as each Scheme is to be addressed on its own as to its target yield and its structure.

That said, there is no link established between the reduction of the threshold and the removal of foreign racing, both in the 42nd Scheme.

Foreign racing was removed from the Levy to align the Scheme with the five year data contracts agreed between Racing and Betting to cover the transition period during which the Levy was planned to end. The Levy did not end and we cannot see that the agreements then form any binding or precedential decision today. This is in the same vein as the agreement between major bookmakers and government in 2000 to bring their internet betting operations back onshore, now reneged on by Betting.

Without the change in the threshold for the 42nd Scheme, the yield would not have reached the target range set out by Tessa Jowell for the 41st Scheme.

3.32

The description of a 'state-aided solution' is not the Levy Board's own view of the Levy, as set out in their recent advice to DCMS in relation to offshore operators.

3.36

The BC's statement that the "*levy should cease*", is made without any substantive comment on the need for and nature of a replacement. Racing has never disputed that the Levy is not fit for purpose and should be replaced in due course with a sustainable and enforceable commercial mechanism between Racing and Betting, potentially involved a rights based framework and an appropriate resolution of the future of the Tote.

SECTION 4 – THE CAPACITY OF BOOKMAKERS TO PAY LEVY

Bookmakers' Total Contribution to Racing

The BC's analysis of the capacity of bookmakers to pay levy is extremely selective in the financial measures it chooses to analyse, notably (but not exclusively) in relation to LBOs.

There is no consideration of the overall profitability (current and recent history) of the betting industry. Instead it chooses to examine the total profits arising from British racing and various total costs associated with the industry (including TV costs, marketing costs and rent and rates), the implication being that these are all directly attributable to British racing.

There is minimal discussion of the scale (and growth) of profits from other products (including FOBTS), with the only reference to these products coming in Figure 8 which sets out the 2009 total OTC gross win and FOBTS (titled B2/B3) of the Big 3 estates.

An important element of the BC's argument is their (incorrect) linkage of the amounts paid by the Betting industry under the Levy with that paid by Betting for the provision of television coverage of horseracing to LBOs, as currently supplied by SIS and Turf TV.

See also our comments under 1.2 in relation to the bundling of levy and media rights.

4.1

Levy payments, media rights and sponsorship rights are completely distinct markets. That the source is the same is irrelevant.

Also, the implication that sponsorship is not a commercial payment but a ‘discretionary’ spend completely contradicts the statement in 4.36.3 that “*marketing costs are “no longer a discretionary spend given the competitive markets in the UK and abroad”*”.

4.4

This is a misleading interpretation of the 47th Scheme determination. See comments above on paragraph 3.22.

4.5

Racing agrees that there should be a new commercial relationship and it is Betting that has rejected all opportunities to progress this issue. See Comments under 3.36.

4.6

The basis of these estimates, notably the split between SIS and Turf TV racecourses, should be made known to us given they are sourced from SIS which by virtue of its ownership may not be independent in matters of levy negotiation.

4.7

The statement made is a truism, as is the statement that when there was a monopoly provider, SIS, LBOs had no option but to buy their picture service at the price offered if the LBO wished to televise British horseracing. One significant independent LBO operator, Chisholms, chooses not to buy the TurfTV service, a choice available to any LBO operator.

4.8

Racing has never sought to hide the total amount of money provided by Betting to Racing each year. Indeed in Racing’s Submission the estimated £160m paid by Betting to Racing in 2008 included the amounts paid to racecourses for their media rights.

4.9

The analysis contained in the BC’s Recommendation does not permit a full examination of the claim that the “*Turf TV initiative*” has led to a significant reduction in profitability in respect of British horseracing given the lack of transparent information. In particular the increased TV costs stated have increased much more markedly than the additional media rights payments received by racecourses. Bookmakers have also a much greater range of betting products provided by SIS hence it would be necessary to properly understand how the total cost of the SIS service is allocated between horseracing and the other betting products. Further, no discussion or recognition is given to the suppression of media rights values when SIS was a monopoly service provider, and the failure of SIS to reflect the loss of that position in its pricing policy today.

4.10

Again, we refute any link between media rights payments and levy contributions. The question posed makes no recognition of the multiple factors that would have to be taken into account when arriving at a reasonable levy yield.

4.11

Should the market result in bookmakers willingly entering into total contracts such that the amount received by Racing was £100m, then that would remain an independent matter from the Levy Scheme.

The Reducing Market Share of British Horseracing Betting Business

Racing does not dispute that its share of the total gross win from the British betting market has been decreasing in recent years, due to the growth of other betting products combined with the impact of the exchanges and offshoring. We note above that the total betting market has expanded significantly in this period, hence the reducing market share has not translated into reduced total gross win on British horseracing to the same extent. However, the figures set out in Figures 5 and 6 are inconsistent with previously accepted industry estimates, for example:

- Total revenue (assumed to be gross win but this needs to be confirmed by BC) of the [British] betting industry between 2000 and 2009 is markedly higher than those contained in previous economic impact studies. For example the c.£4.5bn in 2008 compares to £3.6bn estimate contained in the Economic Impact of British Betting report prepared by Deloitte for Ladbrokes with the co-operation of the betting industry.
- Reading the total market as being £4.5bn in 2008 and percentage represented by machines as 30% suggests a gross win from machines of £1.35bn, yet the equivalent figure for machines in the Economic Impact of the British Betting industry was £1.14bn (sourced to ABB industry model).
- The British horseracing gross win in 2007 is estimated at less than £1.1bn from figures 5 and 6, compared to over £1.2bn for 2007/08 (March) in the Economic Impact of British Racing.
- It is unclear what is included in the “other betting” category in Figure 6 which appears to represent over £1bn of gross win by 2009.

Without further clarity on the source and calculation of these numbers from the BC, we question their credibility.

4.16

This statement is not only irrelevant, but one of just two references to betting exchanges in the body of the BC Recommendations. They have failed to address this very significant issue.

4.17

The BC's position on the relationship, or otherwise, between different forms of betting is both inconsistent and draws on high level unsupported assumptions. As an example of the inconsistency, in 4.17 it states “*suggest there is relative independence between differing products*”, yet in 4.23 it makes the critical and unsupported assumption that 60% of the total gross on horseracing would transfer to other products if horseracing was unavailable.

4.18

As previously noted, the decline in British racing's market share of LBO gross win is not disputed but factors such as declining margins (due to price competition including exchanges) and transfer to remote platforms are contributory factors and beyond the control of Racing.

4.19

We recognise the data here as the output of a survey commissioned by Ladbrokes in 2008. Given the BC has used the product crossover information as a key part of their analysis on the contribution of horseracing, it is important that all parties are able to form an objective view on its robustness. We would therefore expect as a minimum to understand:

1. The nature of the sample and methods used to conduct the analysis – the number and the geographic spread of LBOs used, number of customers covered, period of time used for research etc
2. Basis for estimation of the percentages – pure number of customers, number of betting slips/bets or value of stakes by each category?
3. If not on a value basis then what evidence can BC provide that the basis used is appropriate to make the major assumptions on product crossover that have been made?

4.23

This whole analysis is based upon a range of unsupported sweeping assumptions. We will comment further when we receive the full analysis from London Economics.

4.24

The conclusion of the BC analysis, that the marginal return of British horseracing to all British LBOs is a cost of £2.5m, is not credible when the recent actions of bookmakers to ensure a comprehensive service for British horseracing, including SIS and Turf TV, are considered. Given bookmakers are sophisticated commercial entities who closely monitor the respective performance of different products, it is simply implausible to suggest that they have found themselves in a position where they would be better off not providing opportunities to bet on British horseracing.

What Racing Costs Bookmakers

4.25

Under the 48th Scheme 72% of total levy receipts were from LBOs, meaning 28% came from other sources. The existence of offshore internet and telephone platforms also means that there is a significant amount of non-LBO gross win from British punters that is not subject to levy.

4.27

A gross profits Levy removes per se the possibility of Levy payable being anything other than proportionate, equitable and fairly reflecting the bookmakers' capacity to pay. Thresholds for abated rates of levy payment are utterly inconsistent with this environment.

4.28

See comments under 1.8.2 for points on the claimed price rises due from 2011.

The fact that bookmakers are unable to reclaim VAT is a function of the tax regime in this country and hence has no relevance to the cost to bookmakers of racing content. Betting benefits from not having to charge VAT on the majority of its products.

Even putting aside these factors, the total cost stated is for the provision of all LBO services – incorporating the huge breadth of betting products available in the LBOs. It is

therefore completely misleading to include these gross costs as a cost attributable to racing.

4.32

As per comments under 1.10 and elsewhere, this statement has been shown to be incorrect.

4.33

See comments under 1.7

4.34

Without clarity around the calculation of EBITDA on British horseracing it is impossible to examine the validity of this claim. For example, bookmakers suffer the increasing cost of media rights for Irish and South African racing. Further, the reverse argument to media rights treatment could be made in relation to the much increased marketing costs given the large majority of this increase is likely to have been focused on other sports.

4.35

To simply state that lower EBITDA from British horseracing decreases bookmakers' capacity to pay without any acknowledgement of the impact of other LBO revenue sources is misleading.

4.36

The inclusion of various non-racing specific total costs in this section is highly simplistic and misleading. It also shows an inconsistent approach from the BC; on the one hand they exclude from capacity to pay all revenues other than horseracing, yet at the same time they bring in non-horseracing costs. The points below provide examples of why this is the case:

- **Regulatory costs** have increased but no mention is made of the much higher increases in the betting industry's profits as a result of liberalisation.
- **Rent and rates costs** – the increase in both these costs has been influenced by the increase in LBOs profits, with the growth in FOBTs the largest single factor in these profits.
- **Marketing costs** – the fact bookmakers have significantly increased their marketing spend in order to compete with each other for new and existing customers has nothing to do with Racing. Indeed, examination of the nature of such marketing is likely to show a small proportion involved any direct racing link, for example the extensive television campaigns have largely focused on football betting. Further, there is no analysis of whether the marketing spend is related to leviable revenues or, for example, promoting the offshore non-levy paying internet platforms.

The Economy

As noted before the challenging economic environment is affecting both the Racing and Betting industries.

We do not dispute the majority of economic metrics quoted by the BC but stress again they apply to both industries and that the BC chosen levy mechanism, sharing gross win, will automatically take account of these economic factors in assessing Betting's capacity to pay.

4.48

The fact that “bookmaking has ‘cut its cloth’”, is mirrored by cost efficiencies implemented by Racing (horsemen, racecourses, governing and other bodies).

4.51

The Levy is not a subsidy. The BC’s link with public spending cuts is irrelevant - in contrast with other sports, Racing does not draw on public funds. Further, the BC statement on EU economic policy is not substantiated and incorrect.

SECTION 5 - ATTENDANT ISSUES

5.2

The BC continue to assert that the use of 48 hour declarations for flat racing has led to a greater number of non runners, which in turn has had a negative impact on the level of betting on British racing. No evidence has been provided to support either this assertion or the quantum of the impact. Furthermore, it contradicts the fact that the large majority of bets on racing are placed in the last few minutes before the start of a race when non-runners are clearly known.

5.9

BC does not explain how this proposal could lead to an increase in levy, as they have asserted at 5.1.

5.14

The BC’s point that greater live coverage of horseracing in the home reduces the amount bet in LBOs may well be true, as is the fact that such customers are more likely to bet with non levy paying bookmakers. However, the major problem with this argument is that two thirds of LBOs have an online operation which pays no levy – so if the business is simply moved online the company as a whole is more profitable.

SECTION 6 – THRESHOLDS AND INCENTIVISATION

Racing rejects the BC analysis of Thresholds. Section 5.3 of Racing’s Submission sets out our case with respect to Thresholds, to which we add the following comments:

6.2

Categorisation as set out in the Act can be achieved in many ways. For example, the current Scheme achieves categorisation through betting platform, identifying separate categories of bookmakers such as LBO operators, internet or telephone betting operators, on-course bookmakers, spread bettors, bet-brokers etc with an assessment of capacity to pay being made for each category.

6.3

As noted already, there is no incentive for LBO operators to promote British racing in shops which benefit from paying abated rates of Levy due to the threshold, as more successful their promotion was, the greater the marginal cost to the betting operator.

6.6

As noted previously, this is an unsupported and narrow analysis which Racing does not accept.

SECTION 7 – RECOMMENDATIONS

The majority of the recommendations are not the logical conclusion of the preceding analysis and commentary. BC has provided no rationale for their recommendations in relation to telephone and internet bookmakers, spread betting, betting exchanges, racecourse bookmakers and Point to Point only bookmakers. This is evidenced that BC is not committed to the new process.

7.4

The recommendation of 'no change' in relation to betting exchanges, with no analysis of the issue provided, demonstrates that the BC operates with a single objective to minimise Betting's total payment to Racing through the Levy. The CEO of William Hill has called publicly for the Levy contribution of exchanges to be increased. He has a seat on the BC, and his General Counsel is the Deputy Chairman, but the Recommendations are silent on the issue.

7.7

The default percentage is used in the Levy calculation of LBOs that have manual bet recording and settling systems rather than an EPOS system to capture and store betting data. The default percentage should be based on the EPOS analysis of a small sample of independent shops. The gross win of the big three LBO estates is not a relevant comparator for this exercise.