50TH HORSERACE BETTING LEVY SCHEME

RACING'S SUMMARY CRITIQUE OF THE 'BOOKMAKERS' COMMITTEE RESPONSE TO THE SUBMISSION OF BRITISH HORSERACING IN RESPECT OF THE 50TH ANNUAL HORSERACE BETTING LEVY SCHEME'

Introduction

This paper sets out a summary critique of The Bookmakers' Committee Response to the Submission of British Horseracing in respect of the 50th Annual Horserace Betting Levy Scheme (the 'Report'). We do not believe that the Report sheds any new light on the issues and, instead, contains a number of highly subjective assertions and generalisations that are fundamentally incorrect.

As agreed with the Deloitte Chatel team, this paper does not contain a point by point rebuttal of the Report (or any detail that we have included in other submissions, such as our comments on the work of London Economics) but instead addresses certain key themes and specific claims. Our critique has been kept deliberately brief as we consider that Racing has made its central arguments elsewhere but we would be pleased to elaborate with further detail on any of the information put forward here.

The Levy

It is axiomatic that Racing has an interest in a thriving Betting industry, and vice versa, but to class the Levy as a "subsidy", as the Report does throughout, is a complete mischaracterisation. As we have referred elsewhere it is, in the words of the Government's Quinquennial review of 1999 "…a mechanism for transferring funds from the business of betting on horseraces to "horseracing" in a broad sense." The Levy Board Chairman at the time confirmed that this was the first time Government had conducted such a review (and none have been carried out since).

As such, that review is a key reference point, and counters many of the Bookmakers' claims in the Report. There is no reference in the review to the Levy being a subsidy, and indeed the Levy was introduced at the "joint wish" of Racing and Betting: it is arguable that off-course cash bookmaking would not have been legalised without such a value transfer mechanism having been set up. As also referenced in other documents, there has long been a clear link between Levy Schemes and the provision of product, perhaps most recently when potentially blank Sundays were reintroduced to the fixture list as part of the agreement surrounding the 48th Levy Scheme.

The 2002/03 Determination

We refute any suggestion that the target range of £90-105m set by Secretary of State Tessa Jowell in 2002 was somehow not directly linked with the percentage of gross profits set for the Scheme in question and it is not credible to argue that this quantum was somehow an utterly secondary consideration. That Determination, in setting a Scheme that could yield a return in a certain range, remains another vital reference point. As the Secretary of State's statement at the time made clear, the Scheme was decided upon with assistance from consultants appointed by DCMS that "outlined the various options available and the impact of each option". These "options" had to be linked with the likely quantum each would realise for Racing. Similarly, for the 50th

Scheme, a fair and reasonable target range should be settled upon taking into account all relevant factors etc, and then the Scheme and its mechanics designed to give the best chance of it hitting that range.

"Ultra Vires and Structural Deficiencies" (Report Paragraph 1.40)

With regard to the initial commentary on the potential options for the 50th Scheme laid out in Racing's Submission, we are mystified as to why the Report claims many of the issues are outside the scope of the statute and should play no part in deliberations, particularly when later sections of the Report give historical background to, among other factors, the treatment of overseas racing and the origins of thresholds in the context of previous Levy Schemes.

Further, we are clear that the revised agreed process, rather than "short circuit" "these periodic and repetitious debates", was set up precisely so such issues could be resolved properly. The supposed review launched after Gerry Sutcliffe's Determination of the 47th Scheme and the involvement of Sir Philip Otton did not ultimately deal with the structural deficiencies in question. Racing has for the first time a formal opportunity within the Levy negotiation process to put forward its robust case – in good time ahead of the 31st October annual deadline – and for it to be assessed independently. Such debates are fundamental, not irrelevant or inappropriate, and certainly not ultra vires.

Role of Bookmakers' Committee

The Bookmakers' Committee again take a very narrow view of the overall betting activity that takes place on horseracing and again focuses almost entirely on the LBO market in their argumentation. The BC goes as far as to criticise Racing (para 2.13) for innovating and making its product more widely available and suited to new betting platforms where Racing's market share is higher (80% of William Hill's telephone stakes relate to horseracing, according to their interim results last summer). It is the failure of the Levy to capture all remote betting by British punters that must be addressed, rather than have Racing divert its product away from the growing market on these modern betting platforms.

We are of the view that the Bookmakers' Committee is not capable of addressing and reflecting the betting market environment as it exists in 2010, and Racing's representatives on the Levy Board have written to the Board Chairman separately on this point.

Inflation (4)

Such is the labour intensive nature of horseracing, it is fully appropriate that mortgage costs (and rises therein) be taken into account and hence we use the Retail Price Index here as the appropriate measure of inflation. There are parallels here with the healthcare sector and other labour intensive industries.

Historically, the Levy Board has used RPI measures in all of its work; not only internally in forecasting cost increases, but in the annual increases to LBO Thresholds and Minimum Guarantees.

Shop closures (para 1.14 and elsewhere)

There are again sweeping references to the risk of "significant shop closures" in the Bookmakers' Committee document without any supporting evidence or indeed clear demonstration that this would necessarily be bad for the Levy, given the current proliferation of LBOs in many areas. The Report seeks the impossible in claiming that British horseracing is less and less important to betting operators, yet remains the key determinant of betting shop viability. We also note William Hill's half year results presentation in August 2010, which forecast seventy new shop licences for William Hill during 2010.

In the same paragraph of the Report, the claim that "betting on British horseracing is at an all-time low" is unsubstantiated and our analysis submitted suggests otherwise.

Representativeness of Big 3 Bookmakers (1.39.1)

The Report, and all of the BC submissions, is confused on this point. Ernst & Young has compiled its report for the BC on the basis of big three data, and the BC argument on Thresholds draws no differentiation between the different profitability levels of different scale of operators, yet London Economics, reporting for the BC, takes a different view.

More strikingly, BC has again failed to put forward any alternative industry metrics identifying the total profitability of Betting.

As noted in our commentary on the London Economics report, Racing contends that the use of the Big Three data in its Market Approach Method does give a sufficiently representative outcome, even more so as it is combined with other conservative assumptions used in that model.

Returns to owners (4.60)

It is a disingenuous and a novel interpretation to suggest that the British pattern "is repeated all over the world (except possibly in Hong Kong)." Yes, owners typically don't expect to recoup the entirety of their cost outlay in prize money, but as our submission makes clear (second table, page 46), owners in Britain receive by some margin the lowest return of those in all major racing nations.

Overseas (7)

This section serves to confirm the issue is not out-with the statute, and that there was a clear link between a removal of this claim and the introduction of data licences, which are not now in place.

Thresholds (8)

Our initial case, coupled with our critique of the Bookmakers' Committee's recommendations, covers this issue in depth: a credible argument and clear justification exists to remove thresholds.

Further information received from the Levy Board since our previous submissions shows that, in the last five years of the turnover based Levy, pre the existence of FOBTS and when horseracing was the dominant LBO product, only c21% of LBOs fell below the turnover based threshold, compared to the 93%+ of shops that BC now seeks relief for, or the 70% of such shops in the 48th Scheme (based upon shops open for a full year)

Exchanges (9)

Whilst the Levy Board's consultation on Betting Exchanges does encourage wide-ranging responses, the principal issue at stake within it is a relatively narrow one in the context of betting exchanges and the Levy and distinct from the overall charging method employed for the exchange platform, which our submission makes clear should be revisited in the 50th Scheme negotiations.

Racing has submitted a separate paper in relation to Betfair's comments on Racing's submission.

Offshore (10)

The offshore issue is in the main being tackled at Departmental level, with DCMS having recently concluded a consultation in this area, and the Levy Board confirming in writing clear legal advice that there are no legal impediments to the collection of Levy from offshore bookmakers under a proposed new licensing regime. We would at this point state that gambling is not treated as a service like any other by the EU, and cross-border advertising of gambling websites is prohibited in a number of member states.

6 September 2010