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PUBLIC VERSION

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Subject: State Aid SA.46216 (2017/N) – United Kingdom Horserace Betting Levy

Sir,

1. PROCEDURE

(1) On 10 August 2016 the UK authorities pre-notified amendments to an existing Horserace Betting Levy.

(2) On 22 September 2016 and 7 November 2016 the Commission held technical meetings with the UK authorities. On 10 October 2016 and 6 December 2016 the UK authorities submitted further information on the measure at stake.

(3) On 17 November 2016 the Commission Services received an informal complaint[1] from the Remote Gambling Association (hereinafter RGA), an association that represents the interests of the stakeholders active in companies of the online gambling sector. On 8 December 2016 the complaint was forwarded to the UK authorities. The complainant submitted a formal complaint on 2 March 2017. On 3 March 2017 the Commission forwarded the complaint to the UK authorities.

[1] Case SA.46983 (2016/FC) - Horserace Betting Levy for Great Britain

The Rt Hon Boris JOHNSON
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(4) On 16 January 2017 the UK authorities notified the amendment of the Horserace Betting Levy.

(5) On 10 March 2017 the Commission services received an anonymous complaint. On 15 March 2017 the complaint was forwarded to the UK authorities. The UK authorities submitted further information on 16 March 2017.

2. DESCRIPTION OF THE MEASURE

2.1. Background: the horseracing and betting markets in the UK

(6) In the UK, racing and betting have a unique interdependency that goes back over 200 years. A day at the races includes, for most participants, betting on horse races as well. This interdependency between racing and betting is reflected in, for instance, the need for a sufficient number and spread of races in order to attract betting on the sport, and the need of races with a large field (the number of horses running in a given race) in order to achieve a more attractive betting product. To enable such large field sizes, racing requires a large stock of horses and standards of prize money that are high enough to incentivise owners, breeders, trainers and jockeys to participate.

(7) The British betting and gambling market is a mature and highly competitive market that has been liberalised for many years. Many of the leading operators are listed on the London Stock Exchange. All betting and gambling operators that offer their services in the UK are required to obtain a licence from the Gambling Commission, the betting and gambling regulator in the UK. This obligation applies both to online and land-based operators that provide services to consumers in the UK, wherever they are based.

(8) The horseracing and horserace betting markets in the UK are made up of individual private businesses, with a combination of small and large operators, providing services remotely and non-remotely. Betting and racing have in place a wide range of commercially negotiated contracts, the media payments (payments for race pictures, data and streaming services) being the largest item in terms of monetary value. In addition, the existing Horserace Betting Levy requires a statutory contribution from betting operators based in the UK which contributes to the funding of the organization of horse races.

(9) The racing and the horse racing betting industries have a mutual interest in the organisation of races on which bets are placed. These industries work together to increase the attractiveness of horse racing as a betting product and maximise the quality of racing at the same time. According to the UK authorities, the new Levy Scheme recognises this mutual interest.

2.2. The current Horse race Betting Levy

(10) The principle of transferring funding to racing from the proceeds of betting under statutory arrangements was first established in 1928. The Horserace Betting Levy (the Levy) was first introduced in 1961 when off-course betting was legalised and it was conceived as a mechanism for transferring funding from betting to racing.

(11) The Levy rate is 10.75% of Gross Gambling Yield[2] (GGY). Although the rate is set annually and there are variations in the way that the headline rate is applied across the betting industry in accordance with the agreement signed between the parties, the Levy rate has remained stable over the last decade. It was set at 10% of GGY in 2002, increasing to 10.75% in 2011.

(12) The rate of the Levy is negotiated annually between a committee of industry representatives and the Horserace Betting Levy Board[3] (HBLB). In absence of agreement, the Secretary of State for Culture, Media and Sport determines the rate.

(13) The horse race betting operators established in Great Britain are subject to the Levy. It is worth noting that the Levy only applies in England, Wales and Scotland; it does not apply in Gibraltar and Northern Ireland since there are separate arrangements in place. However, the current Levy does not apply to betting operators based off-shore. According the UK authorities, the introduction and subsequent rapid growth of offshore remote gambling, has contributed to receipts from the statutory Levy declining significantly, from £115 million in 2007-2008 to £54.5 million 2015/2016. Between 2000 and 2008 statutory levy receipts ranged between £83 million to £144 million. During 2009, a large number of UK-based operators relocated offshore, falling outside the scope of the statutory Levy. The UK authorities consider that this decline in the Levy receipts has had a negative impact on both the betting and racing industries. Figure 1 illustrates the decline in Levy yield.

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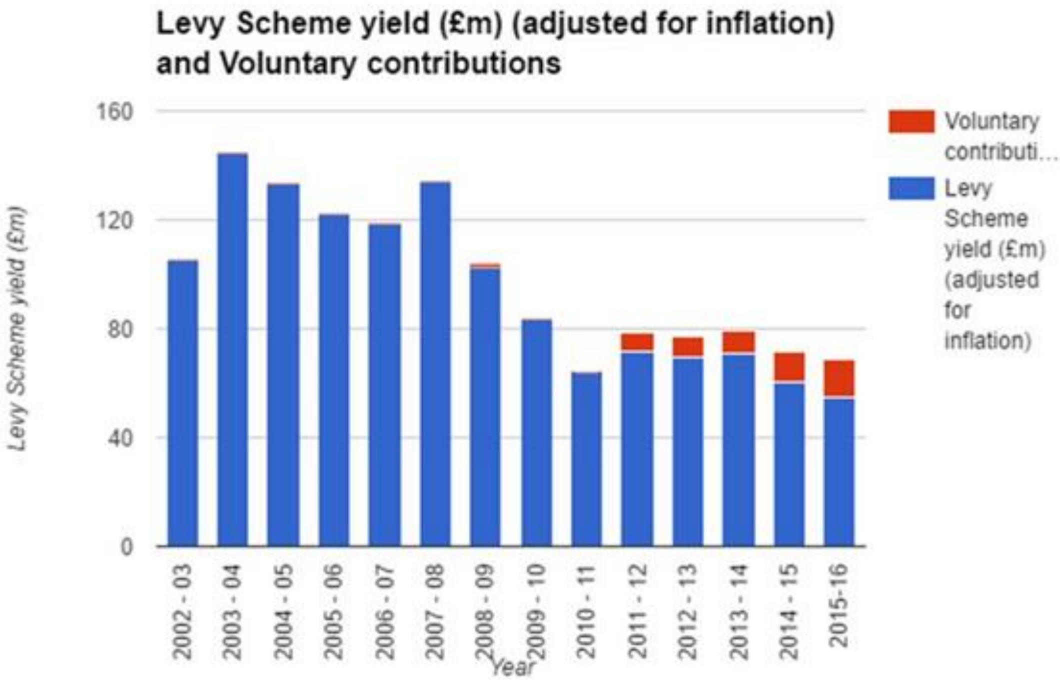
[2] Gross Gambling Yield, also referred as Gross Gambling Revenues (GGR) is stakes placed, minus winning paid out.

[3] The Levy funds, under the current Levy system, are distributed by the Horserace Betting Levy Board (HBLB) in accordance with specific criteria for each area of spend. The areas of spend, as well as the criteria for allocation, are agreed in advance on the levy year through a process of consultation. The HBLB consults the relevant parties, such as betting and racing, and final decisions are taken at Board Level. The HBLB represents a comprehensive cross-section of the racing and betting industries overseen by independent members. The HBLB comprises of seven members, notably the Chair of the Bookmakers' Committee, three representatives of the racing industry (The Chair of the Racecourse Association (RCA); the British Horseracing Authority (BHA) and the Chair of the Horsemen's Group); as well as the Chair, and two other independent Government-appointed members.

Figure 1: *Decline in levy yield*



(14) Alongside this, a number of offshore betting operators, in recognition of the importance of racing to the betting sector, made voluntary contributions to the Levy since 2008. These voluntary contributions equated to over £11 million on 2014-2015, increasing the total yield by more than 15%.

2.3. The measure: amendments to the Horserace Betting Levy

2.3.1. Rate, scope and objective of the new Levy Scheme

(15) The UK authorities intend to amend the existing Horserace Betting Levy. The measure was formulated following public consultation and engagement with the betting and racing industry. The UK Government held three public consultations throughout 2014 and 2015 soliciting a wide range of stakeholder views on reform or replacement of the current Levy. The UK Government also commissioned an independent study on the economic analysis the racing industry. The key aspects of the proposals were shared with representative bodies from betting and racing in autumn 2016, with the subsequent comments being assessed and considered before prior decisions were made.

(16) Under the new Levy Scheme, the statutory contribution from betting to the racing sector is set at a rate of 10% of GGY. The introduction of this rate would yield around £72 million to £84 million per year based on estimates for the year 2015-2016.

(17) The UK intends to introduce a *de minimis* threshold of £500,000 on the GGY on an annual basis. This means that a betting operator will not pay the Levy on the first £500,000 of its GGY derived from taking bets on British horse racing. This implies that betting operators can save up to £50,000 per annum in comparison to a situation where this *de minimis* threshold would not be in place.

(18) All betting operators that take bets on British horse racing, whether offshore or UK-based, will be subject to the Levy. Therefore, the Levy will capture the GGY

derived from bets taken on British horse racing, wherever the operator is based. In addition, firms that take spread bets on British horse racing, under licence from the Financial Conduct Authority, will also be liable under the new Levy scheme.

(19) Under the previous Levy scheme, on-course operators[4] were paying an annual flat fee of £240 as opposed to off-course operators who were subject to a higher rate (10,75% of GGY). Under the new Levy scheme, on-course operators will be liable to the Levy in the same way as the other off-course operators, paying 10% on the GGY derived from the bets on British horse racing.

(20) The objective of the measure is to aid the horse racing and equine sector based on the mutual interest that the racing industry and betting operators have in the organisation of races on which bets can be placed. The measure will also remove the differential treatment in the existing scheme between offshore and UK-based operators, by distributing fairly the burden of funding horse races on which bets are placed.

2.3.2. Duration and administration of the Levy

(21) The measure will be in place for a ten-year period from the date of the Commission decision. A review of the Levy Scheme by the competent Minister will take place within seven years of the legislation coming into force.

(22) The new Levy scheme will be effective from the date of the Commission decision, subject to a nine-month transitional period from the date of the decision. The implementation of the new scheme requires two different legislative instruments and will be implemented into two stages. The extension of the liability to pay the Levy (at the new rate) to all operators who take bets on British horse racing is intended to be implemented on 1 April 2017. The supporting administrative arrangements in relation to collection and spending of the Levy are intended to be implemented by 31 December 2017.

(23) The Levy will be administered by the Gambling Commission as regards the assessment and the collection of the amounts. The Gambling Commission is also responsible for enforcements, i.e. ensuring that betting operators pay the amounts due. The Gambling Commission is a non-departmental public body whose principal role is to regulate commercial gambling in Great Britain. It is overseen by a public Board of Commissioners, all of whom are appointed by the UK Government.

(24) Once the Levy receipts are collected by the Gambling Commission, the funding will then be passed on to a nominated Racing Authority to make expenditure decisions. The Racing Authority for Britain will be a new legal entity set up by the racing industry and it will be required to consult the betting industry on its strategy for the use of the levy funds. The Racing authority will publish an annual report on how the Levy funds were spent in pursuit of the mutual interest.

[4] There are currently three types of on-course betting operators in the UK betting market: individual bookmakers operating from pitches at the side of the track; pool betting taken through kiosks at the course; and Licensed Betting Offices at the course.

2.3.3. Costs covered by the Levy

(25) The Levy funding is earmarked for (1) the improvement of breeds of horses; (2) the advancement of encouragement of veterinary science or veterinary education (3) the improvement of horse racing.

(26) The Levy will finance the following areas of spending:

- Prize money: The majority of levy funding is spent in this area. Prize money helps to ensure the viability of the racing industry by providing incentives for owners, trainers, jockeys, stable staff and breeders to participate in the sport. The British Horseracing Authority has put in place rules that set the distribution of prize money to ensure that a specific percentage is paid to certain areas (e.g. stables, trainers…). Prize money is also crucial from a betting perspective since a substantial prize fund helps to ensure that field sizes (the number of horses running in a given race) remain high, thereby ensuring that horse racing remains attractive as a betting product.

- Integrity (also referred as Raceday Services): Integrity determines confidence that horse racing results are fair and is seen as crucial to ensuring a good quality horse race betting product. It also determines confidence of bettors in horse racing results. The Levy's contribution to this area is made via raceday services grants to racecourses, which contribute to cover the cost of licensed officials, security and veterinary raceday officials, raceday services head office costs, as well as drug testing and drug research services.

- Veterinary science and education: The health of the horse population is vital in ensuring an attractive racing product. Without a horse racing sector that is viable in the long term, horse races could no longer take place. The Levy contributes to finance research projects, education awards, and disease surveillance. According to the UK authorities, this investment has led to significant advances in the understanding, prevention, treatment and management of a wide variety of diseases and injuries.

- Finances and capital expenditure: The investment made by the horse racing companies and more generally their capital costs also have to be financed to ensure the sustainability of the sector. For example, in recent years, a number of racecourses have invested heavily in facilities for visitors as a way to help racing compete in a wider leisure market in attracting people to attend racedays and take bets on races.

3. COMPLAINT LODGED BY THE REMOTE GAMBLING ASSOCIATION

(27) The Remote Gambling Association (RGA) is an association that represents the interests of remote gambling operators. The complainant challenges the new Horserace betting Levy scheme. According to the complainant, the measure constitutes incompatible State aid.

(28) The RGA considers that the notified Levy scheme is not compatible with the internal market under Article 107(3) c).

(29) In particular, RGA argues that it is not clear whether the new Levy Scheme will pursue a clearly defined common interest objective.

(30) In addition, RGA questions the proportionality of the measure, that is, whether the rate of the Levy and the subsequent subsidy to horse racing companies is limited to the minimum necessary to achieve the relevant objective of common interest. RGA argues in particular that:

1. The Frontier Economics report provides two scenarios where it identifies common interest costs of around £10 million and £20 million respectively. These figures are much lower than the levy yield of around £80 million calculated by the UK authorities.

2. The amount of commercial payments that go from the betting to the racing industry suffices to meet any valid common interests that are identified. According to the complainant, the commercial arrangements include media payments, advertising, sponsorship, and the system of Authorised Betting Partners and amount to £300 million per year.

3. The UK authorities would have underestimated the amounts that the Levy would yield. According to the complainant, the Levy will yield £90 million to £100 million, whereas the UK authorities estimate a yield of around £80 million per year. The figures provided by the complainant are based on: (i) work undertaken recently by KPMG for the betting industry, which suggests that for 2017-2018, the GGY of the horse race betting industry will be between £940 million and £980 million; (ii) the Frontier Economics report which suggests that the horse race betting industry has a GGY figure of £1.06 billion.

4. The complainant also argues that the new Levy scheme provides for a flat-rate levy with no provision for the adjustment of the levy to prevent overcompensation. This would result into a situation where there is no verification of whether the subsidy to the racing industry does indeed reflect the eligible costs incurred by the industry.

(31) Furthermore, RGA argues that while the creation of a level playing field is supposed to be one of the main justifications of the reform of the Levy Scheme, it seems that under the proposals submitted by the UK authorities, as few as 5% of the betting operators would be liable to pay the Levy.

(32) According to the RGA, the UK authorities are also mistaken when considering as a precedent the French horse race Levy case[5] (see e.g. recital (37)). The complainant alleges that the present measure diverts from the French horse race Levy insofar as one of the justifications for the French Levy was that it would contribute to the opening up and licensing of the online betting sector in accordance with Article 56 TFEU. In the UK, the betting sector is longstanding, extremely competitive, and already contributes significantly to the funding of horse racing through a whole range of commercial arrangements.

4. COMPLAINT LODGED BY AN ANONYMOUS PARTY

(33) The complainant alleges that the new Levy Scheme constitutes incompatible State aid. In particular, the complainant argues that the measure confers a selective advantage on medium-sized operators since they are not subject to the Levy on

[5] See Commission Decision of 19 June 2013 on State aid No SA.30753 (C 34/10) (ex N 140/10) which France is planning to implement for horse racing companies

the first £500 000 slice of GGY. It would also confer a selective advantage on spread-betting operators which would be liable to pay a reduced 6.5% rate on their GGY.

(34) According to the complainant, the new Levy does not pursue a well-defined common interest objective. The obligations as to the distribution of the funds create a broad remit within which the new Racing Authority will enjoy substantial discretion. The complainant explained that it appears that there would not be restrictions on distribution and no effective controls that the aid will be dispensed only in relation to the common interest objectives. In addition, the complainant argues that there is no market failure that would justify the amount of the new Levy. Frontier Economics' report calculated that the market failure is in the order of £10 to £20 million per year. This amount is vastly less than the £90 to £100 million likely raised by the new Levy.

(35) The complainant alleges that the new Levy is not well designed to deliver a well-defined common interest objective. In particular, the complainant argues that the aid is not proportionate and that it does not have an incentive effect. The measure is not proportionate because there is no justification for increasing the amount of subsidy from the existing levels (around £60 to £75 million per year) to the £90 to £100 million per year that the new Levy may be expected to raise. Frontier Economics' report found that racecourse revenues (£549 million) exceeded the costs (£490 million). In addition, the maximum amount to correct the market failure which was identified in the Frontier Economics' report was in the range of £10 to 20£ million.

(36) The complainant argues that the measure does not fulfil the incentive effect requirement since there seems not to be effective restrictions or controls on the objectives in pursuit of which the UK racing industry may distribute the funds raised under the new Levy.

5. UK'S COMMENTS ON THE TWO COMPLAINTS

5.1. Objective of common interest

(37) The UK alleges that the measure pursues a first common interest objective which is the rational development of equine production and breeding. The UK authorities note in this respect that the conclusions reached in the Commission decision on the French Levy[6] as to the importance of the rational development of the equine production and breeding should also be applicable in the present case.

(38) Moreover, the UK authorities also consider that the measure addresses an existing market failure whereby betting operators benefit from racing but do not necessarily have to make a contribution to its costs. It also addresses an existing market distortion whereby offshore operators are not liable to make any payments to racing while benefitting from the organization of horse races.

(39) The measure would allow fair competition amongst operators in the market for horse race betting, by distributing fairly the burden of funding horse races on which bets are placed between all betting operators.

6 *Idem*

(40) The measure would therefore consolidate the open gambling market in place in the UK in accordance with the principle of freedom to provide services within the Union embodied in Article 56 TFEU.

5.2. Proportionality of the measure

(41) According to the UK authorities, the method used to calculate the rate of the Levy strikes the appropriate balance to ensure that all betting operators contribute to the mutual interest, while allowing for commercial contracts.

(42) The UK authorities have explained that a rate set at 10% of GGY is below the estimated net funding that is needed to secure a sustainable racing sector over time. The UK authorities have demonstrated this on the basis of 2014 financial data.

5.2.1. Net funding needs of the horse racing sector

(43) The UK authorities commissioned Frontier Economics[7] to produce a report estimating the cost and revenues of the horse racing sector over the three-year period 2012-2014.

(44) From the outset, the UK authorities explained that the Frontier Economics' scenarios referred to by both complainants only captured a proportion of the races on which betting operators can offer bets and generate profits in the UK. For instance, a first scenario only covered 21% of all fixtures between 2012 and 2014; and a second scenario only captured the costs for 56% of all races with a minimum of 6 runners, and 39% of all races with a minimum of 8 runners. The UK authorities consider that these two hypothetical scenarios should be read with a caveat, since as it is stated in the Frontier Economics report they are set out for illustrative purposes.

(45) Using the Frontier Economics report as a basis, the UK authorities have provided their own calculation of the total net funding needs of the horse racing sector which is described below.

5.2.1.1. Racecourse costs

(46) Frontier assessed total racecourse costs to be £490 million in 2014. The costs considered by Frontier were the following:

Table 1: *Racecourse costs (2014)*

Category	**£m**
Prize money	123.0
Raceday costs	127,9
Other staff costs	39,8
Catering	82,2

7 An Economic Analysis of the Funding of Horseracing (a report prepared for the Department for Culture Media and Sport), June 2016, Frontier Economics, London

Administrative costs	42,6
Establishment costs	60,2
Other race related costs	14,1
Total	**489,8**

(47) According to the UK authorities, Frontier Economics' approach for calculating the funding required for the organization of horseraces focused on the costs of individual racecourses, meaning that there were a number of sector-wide costs that were not captured in that study. In addition, costs of other parts of the supply chain need to be considered when arriving at the level of funding required. Therefore, the estimation of costs needs to be supplemented by a number of costs that were not captured by Frontier Economics' report. The UK authorities identify three categories of these additional costs, which were not taken into account in the calculation of the level of funding required for the organization of horseraces by the Frontier Economics report:

(a) Finances and capital expenditure: In recent years, a number of courses have been investing heavily in facilities for visitors. Frontier Economics found out that the interest paid, financing, dividends and share purchases did not appear to be well captured in the accounts. In 2012, these costs amounted to: £26 million (interest paid), £14 million (financing costs), and £7 million (dividends and share purchases). Frontier Economics also estimated that in 2012 capital expenditure on racecourses amounted to £20 million. The total amount (£67 million) is used as an approximation for the 2014 calculation. This item of expenditure was not taken into account by the Frontier Economics report when calculating the level of funding required for the organization of horseraces. According to the UK authorities, it should also be included.

(b) Veterinary research and education: The health of the horse population is vital for the sustainability of the racing sector. Since the beginning, the Levy has funded equine veterinary science and education with the aim of improving the health and welfare of the racing, breeding and rearing of the thoroughbred horse. Contributions to this area of spending have reduced due to the decline in the overall levy yield. During the period 2005-2010 when all betting operators were contributing to the Levy, veterinary contributions from the Levy were on average £2.9 million. The UK authorities consider that this amount of investment is crucial in ensuring a viable horse racing product and should be a part of the racecourse cost. This item of expenditure was not taken into account by the Frontier Economics report when calculating the level of funding required for the organization of horseraces. According to the UK authorities, it should also be included.

(c) Prize money: The UK authorities claim that prize money is critical to the sustainability of horse racing. It is the principal way in which funding is distributed through the supply chain (the rules of racing prescribe the distribution of prizes, fixing certain percentages for owners, trainers, the stable and jockeys). In particular, it provides the incentive for owners to own, train and supply racehorses. The Frontier Economics report pointed out that there is a strong positive correlation between the decline of average prize money per runner and withdrawal of ownership.

The UK explained that the majority of the levy funding is currently allocated to prize money (around 60% of the Levy yield). However, the decline of the Levy yield has had a negative impact on the level of prize money funding, with contributions falling from £64 million in 2009 to £48 million in 2014. This decline in the prize money funding has had a negative impact both on racing as an attractive betting product and on the competitive position of British horse racing vis-à-vis other Member States where prize money per race is substantially higher, notably France and Ireland.

In order to estimate an appropriate level of prize money funding, the UK authorities have calculated the average prize money per race of races in France, Ireland and Australia in 2014 which amounted to €21,601. The average over the same period in the UK was €15,600. (See Table 2 below)

Table 2: *Average prize money per race 2014.*

Country	Total number of races	Total prize money (euro)	Average prize money per race (euro)
Australia	19,511	391,601,690	20,071
France	7,166	189,798,398	26,486
Ireland	2,489	48,605,000	19,528
Total	29,166	630,005,088	21,601

For the purposes of identifying the funding required for a sustainable racing sector, the UK authorities extrapolate the average prize money per race (€21,601) by the number of races in the UK in 2014. This provides an increase in total prize money costs of £52 million. (See Table 3 below)

Table 3: *Prize money extrapolation based on competitors*

	Number of races	Optimum prize money per race (euro)	Total prize money
Great Britain	10,105	21,601	218,274,752
		Actual total prize money:	157,900,270
		Difference:	60,374,482
		Converted to British sterling (at rate of 1.16 euro to the pound)	£52,046,967

(48) Considering the above, Table 4 contains a description of the funding required for a sustainable racing sector.

Table 4: *Funding required for a sustainable racing sector (2014)*

Categories	£m

Racecourse costs as per Frontier's initial calculation	490
Additional racecourse costs (finance and capital) (item a))	67
Veterinary research and education costs (item b))	3
Shortfall in prize money item c))	52
Total	612

(49) The funding required for a sustainable racing sector amount therefore to £612 million for 2014 according to the UK authorities**.** The UK authorities have explained that the shortfall in prize money was not taken into account by the Frontier Economics report when calculating the level of funding required for the organization of horseraces. According to the UK authorities, it should also be included.

5.2.1.2. Racecourse revenues and commercial payments

(50) Frontier Economics estimate that the racecourses revenue from non-betting sources was approximately £322 million in 2014.

Table 5: *Non-betting revenues (2014)*

Category	**£m**
General admission	98.3
Catering	109.8
Hospitality	5.9
Sponsorship and advertising	19
Other raceday income (1)	25.7
Other fixed racing income (2)	23.9
Other non-racing operating income (3)	39.2
Total	**321.8**

(51) On top of these non-betting revenues, Frontier Economics estimate that the racecourses obtained commercial revenues from betting sources amounting to approximately £157 million.

Table 6: *Betting revenues (2014)*

Category	**£m**
On-course betting	12.2
Sponsorship and advertising	17.1

Media rights	127.8
Total	**157.1**

(52) The UK authorities therefore contest the estimate of £300 million alleged by the complainant (see recital (30)). Moreover, the UK authorities have explained that, unlike other Member States, neither the racing sector nor the State own the organization of horse races, so commercial payments received by private stakeholders do not guarantee the common costs of horse racing are met. In order to ensure a sustainable racing sector, this can only be guaranteed through the Levy payments that are applied across the sector as a whole.

5.2.1.3. Racecourse net funding need

(53) Taking into account all costs and all revenues, the racecourses' net funding needs amount to £133 million (see Table 7) for 2014. The difference between the estimate of the UK authorities and the one of Frontier Economics relates to the additional costs described in recital (47).

Table 7: *Comparison of Frontier Economics' racecourse costs estimate v all racing sector costs (2014)*

	Gross cost *[cf Table 4]* £m	Net cost (netting non-betting racing commercial revenues) *[cf Table 5]* £m	Net cost (also netting media and sponsorship revenue from betting, but excluding levy)* £m
Frontier's racecourse costs	490	168	11
All racing sector costs	612	290	133

* *[Table 4 - (Table 5+Table 6)]*

(54) The UK authorities consider that as these net funding needs are higher than the expected levy yield. The new Levy scheme is therefore necessary for a sustainable racing sector.

5.2.1.4. Avoidance of overcompensation

(55) The UK authorities have explained that there will be a process in place to ensure that the levy recipients are not overcompensated. The Racing Authority will be the new legal entity entrusted with managing the funds. The UK authorities have confirmed that in order to confer functions and duties on the Racing Authority, it should be guaranteed that processes will be in place to ensure that levy recipients will not be overcompensated. Moreover, the Racing Authority's activities and expenditure decision will be published in an annual report.

(56) The UK authorities have explained that the funds are allocated to three areas of spend, notably prize money, raceday services (or integrity) and veterinary science and education. In order to avoid overcompensation; there will be a mechanism in place so as to recover misappropriated funds and to recover unspent funds.

(57) Furthermore, the UK authorities commit to inform the Commission of the future structure of the Racing Authority and to set out the key changes from the current

Horserace Betting Levy Board organization, where these are not of purely formal or administrative nature.

5.2.2. Levy yield

(58) The UK has argued that the estimated yield of the Levy of around £80 million per year is based on estimations of what the proposed rate would have produced in the period 2015 and 2016. The UK authorities agree that the actual yield in future years may fluctuate, but they do not consider that the GGY in the coming years will change significantly.

(59) The UK also contests some of the figures provided by both complainants. In particular, the UK authorities explained that the Frontier Economics' estimate of £1.06 billion GGY for 2014/2015 also included bets on races organized offshore, whereas the Levy will only apply to bets on horse racing courses in the Great Britain.

5.3. Level playing field

(60) The UK considers that the new Levy scheme will ensure that all operators with GGY in excess of a certain level are equally obliged to make a contribution to the costs of racing, while reducing the risk of disproportionate costs or administrative burdens falling on smaller operators. This would reduce the risk of the new funding model acting as a barrier to betting operators entering the market, which is essential to ensure the development of competition and which ensures continuity of horse racing and its positive impact on the equine industry.

(61) Both betting and racing industries agree that smaller and less profitable operators should benefit from a relief scheme. In addition, the UK wishes to reduce the risk of the levy acting as a barrier to entering the market. Currently this is reflected via discounts to the Levy for operators with shops that make a profit on racing below certain thresholds.

(62) The notified Levy will ensure that all UK-based and off-shore operators pay the Levy on British horse racing, while the proposed de *minimis* threshold would be non-discriminatory as all operators would benefit from it.

(63) The UK authorities estimate that the Levy will be paid on over 95% of gross gambling yield (GGY) generated on British horse racing, based on their analysis of the market in 2015 and 2016. The remaining amount, which is approximately less than 5% of the total GGY, is the amount foregone as a result of the de *minimis* threshold. Of this amount, nearly three quarters (approx. £1.1million in 2015 and 2016) corresponds to the GGY of the largest operators, as they also benefit from the de *minimis* threshold.

6. ASSESSMENT OF THE MEASURE

(64) The following assessment concerns the current Horserace betting Levy including the substantial modifications introduced by the UK authorities.

6.1. Presence of State aid within the meaning of Article 107(1) TFEU

(65) Pursuant to Article 107(1) TFEU, *"any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort*

competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

(66) A measure qualifies as State aid if the following cumulative conditions are met: (i) the measure has to be granted by Member States through State resources, (ii) it has to confer a selective economic advantage to certain undertakings or the production of certain goods, (iii) the advantage has to distort or threaten to distort competition, and (iv) the measure has to affect intra-EU trade.

(67) It has to be analysed whether the new Levy Scheme can involve State aid to horse racing companies and/or possibly to betting operators.

6.1.1. Aid to horse racing companies

(68) The UK authorities have notified the measure as compatible aid to horse racing companies. They therefore consider the measure to involve State aid to horse racing companies. The Commission agrees with this assessment for the reasons explained below.

6.1.1.1. State resources

(69) Pursuant to Article 107(1) TFEU, the measure should be granted by a Member State or through State resources in any form whatsoever. At this stage, there are two cumulative conditions that need to be assessed: (i) whether the measure is imputable to the State; (ii) whether the measure is financed through State resources.

(70) A measure is imputable to the State in cases where a public authority grants an advantage to a beneficiary, even if the authority in question enjoys legal autonomy from other public authorities. This is also the case when a public authority designates a private or public body to administer a measure conferring an advantage. Indeed, Union law cannot allow the circumvention of State aid rules through the creation of autonomous institutions charged with allocating aid[8].

(71) In the present case, the measure is imputable to the State because the Levy will be administered by a public body -the Gambling Commission- whose main mission is to regulate commercial gambling in the UK. The Gambling Commission is directly involved in administration of the Levy, notably in the assessment, the collection of the amounts and enforcement. Moreover, the Gambling Commission is overseen by a public Board of Commissioners, all of whom are appointed by the UK Government. Once the Levy receipts are collected by the Gambling Commission, the funding will be passed on to a nominated Racing Authority, which will be a new legal entity set up by the racing industry.

(72) According to settled case law, the notion of State resources covers all the financial means by which public authorities may support economic operators, irrespective of whether or not those means are permanent assets of the public authorities. Consequently, even though the levy yields are not held permanently by the public authorities, the fact that they remain constantly under public control,

[8] Judgement of the General Court of 12 December 1996, Air France v Commission, T-358/94, ECLI:EU:T:1996:194, paragraph 62.

and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources[9]. Similarly, the originally private nature of the resources does not prevent them from being regarded as State resources within the meaning of Article 107(1) TFEU[10].

(73) Moreover, subsidies financed through parafiscal charges or compulsory contributions imposed by the State and managed and apportioned in accordance with the provisions of public rules imply a transfer of State resources[11].

(74) The relevant factor is not the origin of the resources, which are compulsory contributions made by the betting operators, but the degree of intervention of the State in the design of the measure and the method of financing. In the present case the Levy is formulated and imposed by the UK authorities upon betting operators that have to contribute in a binding manner to the Levy and the collected resources are administered by a body designated and controlled by the UK authorities.

6.1.1.2. Undertaking

(75) According to settled case-law[12], the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed.

(76) In the present case, the organization of horse races constitutes an economic activity which generates revenues directly from the sale of tickets for the attendance to races and through the revenues drawn from the betting activities (e.g. through the commercial contracts such as the media payments). Hence, horse racing companies are to be considered undertakings within the meaning of Article 107(1) TFEU.

6.1.1.3. Advantage

(77) The measure must confer a financial advantage to the recipients in order to constitute State aid. An advantage is conferred to an undertaking if it receives an economic benefit that would not have been obtained under normal market conditions.[13] According to settled case-law[14], an advantage is present whenever

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9 Judgement of the Court of Justice of 16 May 2000, *France v Ladbroke Racing and Commission* C-83/98 P, ECLI:EU:C:2000:248, paragraph 50

10 Judgement of the General Court of 12 December 1996, *Air France v Commission*, T-358/94 ECLI:EU:T:1996:194, paragraphs 63-65

11 Judgement of the Court of Justice of 2 July 1974, *Italy v Commission*, C-173/73, ECLI:EU:C:1974:71, paragraph 16; Judgement of the Court of Justice of 11 March 1992, *Compagnie Commerciale de l'Ouest*, Joined Cases C-78/90 to C-83/90, ECLI:EU:C:1992:118, paragraph 35; Judgement of the Court of Justice of 17 of July 2008, *Essent Netwerk Noord*, C-206/06, ECLI:EU:C:2008:416, paragraphs 58 to 74.

12 See Judgement of the Court of Justice of 12 September 2000, *Pavlov and others* Joined cases C-180/98 to C-184/98 ECLI:EU:C:2000:428, paragraph 74.

13 Judgement of the Court of Justice of 2 July 1974, *Italy v Commission* C-173/73, ECLI:EU:C:1974:71 paragraph 13; Judgement of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60.

14 Judgement of the Court of Justice of 12 October 2000, Magefesa, C-480/98, ECLI:EU:C:2000:559, paragraphs 19 and 20.

the financial situation of an undertaking is improved as a result of State intervention on terms differing from normal market conditions.

(78) Horse racing companies are the final beneficiaries of the levy yields, which constitute an economic benefit that they would not have obtained without the State intervention and under normal market conditions. The financial situation of horse racing companies is therefore improved as a result of the adoption of the Levy. Hence, the Commission finds that the measure grants an economic advantage to horse racing companies.

6.1.1.4. Selectivity

(79) A measure is selective inasmuch as it favours certain undertakings or the production of certain goods within the meaning of Article 107(1) TFEU.

(80) Under the new Levy Scheme, horse race betting operators will be subject to a rate of 10% on the GGY derived from the bets placed on British horse racing. The Levy yields are then earmarked for the financing of horse races, the horse racing industry being the ultimate beneficiary of the measure. Therefore, the Levy favours a distinct group of undertakings, notably the horse racing companies. In consequence, the Commission finds that the measure at stake is selective.

6.1.1.5. Distortion of competition and effect on trade

(81) According to Article 107(1) TFEU, for a measure to qualify as State aid it has to affect intra-EU trade and to distort, or threaten to distort competition. In this regard, the Court of Justice has consistently held that a measure is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes.[15]

(82) The UK authorities have recognized the competitive nature of the international racing industry. Great Britain's horse race industry is competing against the horse race industry of other Member States in order to offer attractive horse races, which notably implies attracting the best horses, breeders, jockeys…. Examples of Member States where there is an active horse racing market are notably France, Germany and Ireland. Horse racing companies also compete between each other in the EU market to attract betting operators as they all benefit directly or indirectly from betting revenues.

(83) Considering the above, the Commission considers that the adoption of the measure will affect intra-EU trade and will distort, or threaten to distort competition.

6.1.1.6. Conclusion

(84) In the light of the foregoing, the Commission concludes that all conditions set out in Article 107(1) TFEU are fulfilled and that the Horserace Betting Levy scheme constitutes State aid granted to horse racing companies.

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[15] Judgement of the Court of Justice of 17 September 1980, Philip Morris, 730/79, ECLI:EU:C:1980:209, paragraph 11; Judgement of the Court of First Instance of 9 of September 2009, *Holland Malt BV*, T-369/06, EC ECLI:EU:T:2009:319, paragraph 47

6.1.2. Aid to the betting operators

(85) The introduction by the UK authorities of a *de minimis* threshold of £500,000 on the GGY (see recital (17)) means that, in practice, any betting operator will not pay the Levy on the first £500,000 of GGY derived from taking bets on British horse racing and can therefore save up to £50,000/year in comparison to a situation where there would be no *de minimis* threshold. According to the UK authorities, even if this amount were considered to be a selective advantage, it remains below the threshold laid down in the de Minimis Regulation (€200,000 over 3 years)[16]. Provided that the other conditions contained in the de Minimis Regulation are also respected by the UK authorities, the introduction of the de *minimis* threshold will not involve State aid for betting operators.

(86) In this respect, the UK authorities have committed to introduce arrangements in order to ensure that the *de minimis* conditions are fulfilled by the beneficiaries of the aid. More in particular, the UK authorities have explained that the maximum aid they could receive is £50,000 annually, which equates to approximately EUR 58,000 annually, below the EUR 200,000 threshold for a three year period. The legislation will also provide that the *de minimis* amount only applies to a single undertaking. There will be a specific provision to cover the situation where an undertaking forms part of a group; the group will only be entitled to receive one allowance to be allocated between the members of the group. The HBLB and afterwards the Gambling Commission, will be in charge of monitoring the enforcement of the *de minimis* conditions. The HBLB will ask information from operators to monitor that each recipient of the aid fulfils the *de minimis* conditions. The HBLB will keep records to ensure that the *de minimis* threshold is not exceeded, and will retain those records for 10 years.

(87) As a conclusion, the new Levy Scheme is not deemed to involve State aid for betting operators, as it is provided in compliance with the *de minimis* Regulation.

6.2. Compatibility of the new Levy scheme under Article 107(3) c) TFEU

6.2.1. Hypothecation of the aid measure

(88) In the case of an aid financed by a tax or a levy assigned for a specified purpose, it may be necessary to take into account not only the aid measure itself, but also how it is financed. Indeed, if it is established that there is a compulsory hypothecation between the tax or levy revenue and the aid measure in question, then the underlying tax or levy is considered as part of the aid measure and the compatibility assessment of the aid must take this into account.[17]

(89) According to settled case law, for a tax to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid under the relevant national rules, in the sense that the revenue from the charge is necessarily allocated for the financing of the aid and has a direct impact on the amount of the aid and,

[16] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to the *de minimis* aid; OJ L352/1 24.12.2013

[17] Judgement of the Court of Justice of 13 of January 2005, *Streekgewest Westelijk Noord-Brabant*, Case C-174/02 , ECLI:EU:C:2005:10, paragraph 26

consequently, on the assessment of the compatibility of that aid with the common market[18].

(90) Therefore, in the present case the Levy, in order to be regarded as forming an integral part of an aid measure has to meet two conditions: (i) the Levy must be hypothecated to the aid, i.e. the financing of horseraces, under the relevant national rules in the sense that the revenue from the charge is necessarily allocated for the financing of the aid; (ii) the Levy has a direct impact on the aid and consequently on the assessment of the compatibility of the aid measure.

(91) In the present case, it is apparent from that the revenues generated by the Levy are earmarked for financing the organization of horseraces. As explained by the UK authorities the Levy yields will finance certain areas of expending that are intrinsically linked to the sustainable organization of horseraces, notably the prize money, the veterinary science and education, finances and capital expenditure and integrity. The Levy is therefore levied specifically and solely for the purpose of financing the organization of horseraces.

(92) The revenues from the Levy are used wholly and exclusively to finance the organization of horseraces and therefore have a direct impact on the amount of that aid. As indicated by the UK authorities, without the revenues generated by the Levy, there could be a contraction of the sector. Moreover, it is worth noting that the Gambling Commission does not have the power to allocate the funds for purposes other than that of such aid. Therefore, the revenues obtained from the Levy have a direct impact on the amount of the aid granted to the horseracing industry.

(93) To conclude, it is observed that the volume of aid to the horse racing companies results directly from the revenue generated by the Levy. There is therefore a link of compulsory hypothecation between the aid measure and the levy revenue. Hence, the compatibility analysis has to take into account not only the aid measure itself, but also the specificities of the Levy which finances the measure.

6.2.2. Balancing test

(94) The UK authorities consider that the measure is compatible with the internal market under Article 107(3) c) TFEU.

(95) It is worth noting that the European Commission has previously declared compatible with the internal market under Article 107(3) c) TFEU similar measures concerning the financing of the horse racing sector through the proceeds of betting activities[19].

(96) The Commission is also of the opinion in this case that the notified measure may be declared compatible with the internal market pursuant to the derogation provided in Article 107(3) c), which authorises "…*aid to facilitate the development of certain economic activities or of certain economic areas, where*

[18] Judgement of the Court of Justice of 22 December 2008, *Régie Networks*, Case, C-333/07, ECLI: ECLI:EU:C:2008:764, paragraph 99.

[19] See Commission Decision of 19 June 2013 on State aid N° SA.30753 (C 34/10) (ex N 140/10) which France is planning to implement for horse racing companies; See Commission decision of 2 July 2013 on State aid N° SA.35200 (2012/N) Rennwett- und Lotteriegesetz.

such aid does not adversely affect trading conditions to an extent contrary to the common interest."

(97) The Commission notes that the measure does not fall within the scope of existing guidelines for the application of Article 107(3) c) TFEU. Thus, the compatibility of the measure should be assessed directly under the latter Treaty provision. In order to be compatible under Article 107(3) c) TFEU, the aid measure in question must pursue an objective of common interest in a necessary and proportionate way.

(98) When assessing the compatibility of a measure under Article 107(3) c) TFEU, the Commission balances the positive effects of the measure in pursuing an objective of common interest against its potentially negative side effects, such as effect on trade and distortion of competition. This balancing test is based on a three-stage examination. The first two steps address the positive effects of the State aid measure. The third step addresses the negative effects and the resulting balance between the positive and negative effects. The balancing test is structured as follows:

(a) Does the aid measure aim at a well-defined objective of common interest?

(b) If so, is the aid measure well designed to deliver an objective of common interest? In particular,

– Is the aid measure an appropriate instrument or are there alternative or more suitable instruments?

– Does the aid act as an incentive

– Is the aid proportional to the objectives pursued?

(c) Are the distortions of competition and effect on trade limited to the extent that the overall effect of the measure is positive?

6.2.3. Objective of common interest

(99) The Commission is of the opinion that the measure aims at pursuing valid objectives of common interest.

(100) Indeed, the Commission has consistently declared compatible with the internal market tax measures applied to enterprises of a certain sector that aim at financing collective activities that would benefit the entire sector[20].

(101) The Commission considers that the new Levy Scheme contributes to the creation of a level playing field and fairer competition in the open horse race betting market by addressing two market failures: 1) the fact that betting operators benefit from horse races without having to contribute to the costs of organizing them; and

[20] State Aid decision N472/2000 of 3 May 2001Renouvellement à l'identique de la taxe parafiscale sur les industries du cuir JOCE C7322/2000; State aid N163/2002 of 18 September 2002 Taxe parafiscale – financement du Bureau National Interprofessioneel du Cognac (BNIC) JOCE C/310/2002; State aid decision, N496/2000 of 17 December 2002, Aides à l'élimination des déchets dangereux pour l'eau, JOCE C/108/2003.

2) the fact that offshore operators placing bets on British horseracing and on-course operators are currently not subject to the Levy, whereas other betting operators such as UK-based and off-course betting operators had to contribute to the Levy.

(102) First, the new Levy Scheme ensures a fair distribution of the financial burden between the betting and the racing industry. Both the racing and the betting industries benefit from the organisation of horse races. However, without the Levy, betting operators could benefit from the organisation of horse races by placing bets on them, without bearing their fair share of the financial burden related to the organization of these races. The Levy aims at financing the organisation of horse races based on the mutual interest that the racing industry and betting operators have in the organisation of races on which bets can be placed.

(103) Second, the new Levy Scheme ensures a fair distribution of the financial burden of organising horse races amongst all betting operators, wherever they are based. The previous Levy Scheme led to an unbalanced situation where a betting operator physically based in Great Britain had to pay the levy, whereas other operators that were based offshore and were offering the same betting service on the same races, did not have to contribute to the Levy. Under the reformed Levy Scheme, all betting operators with a GGY above the threshold of £500,000 and placing bets on British horse racing will have to contribute to the funding of horse races.

(104) Finally, the new Levy Scheme also ensures a fair distribution of the financial burden of funding horse races by extending the obligation to contribute to the Levy to other betting operators that were not subject to the previous Levy, or that were subject to a different levy rate under the previous Levy Scheme. Under the reformed Levy Scheme, firms that place spread bets on British horse racing, under a licence from the Financial Conduct Authority, will also be liable to pay the Levy. In addition, under the new Levy scheme, also on-course operators will be liable to the Levy in the same manner as the off-course operators and will be obliged to contribute with 10% on their respective GGY derived from the bets on British horse racing instead of paying an annual flat fee of £240.

(105) Moreover, the organisation of horse races contributes to the improvement of the performance of horses and therefore, to the support of horse breeding activities in the UK. The Levy provides funding for three areas of spending –prize money, integrity, and veterinary science and education- which are linked to the development of equine production and breeding. These three areas of spending have a direct impact on a number of variables that are essential for the sustainability of the horse racing industry, notably the number of horses in training, the number of owners, core industry employment and field size. Council Directive 90/428/EEC of 26 June 1990[21] on trade in *equidae* intended for competitions and laying down the conditions for participation therein acknowledges in its preamble the interest to ensure a rational development of *equidae* production and to favour the safeguard, development and improvement of the breeding sector.

[21] OJ No L 224, 18.8.1990, p. 60

(106) The Commission concludes, for the reasons stated in preceding recitals, that the measure pursues objectives of common interest. The Commission also considers that both complainants have not sufficiently demonstrated that the measure does not comply with the abovementioned objective of common interest.

6.2.4. Well-designed aid

(107) An aid measure is considered necessary and proportional when it constitutes an appropriate instrument to achieve the identified objective of common interest, when it has an incentive effect on the beneficiaries and when it does not introduce unnecessary distortions of competition.

6.2.4.1. Appropriate instrument

(108) The UK considers the measure appropriate to achieve the objective of ensuring the continuity of horse racing and ensuring fair competition. According to the UK, the aid measure aims to spread the burden of financing horse races among all the operators that are authorised to offer horse race bets in the British market. The measure is suited to ensuring fair competition between horse race betting operators by preventing offshore operators' competitors from obtaining a share of the British betting market without contributing to the costs of organising horse races. The UK considers that the measure ensures the continuity of horse racing and its positive impact on horse breeding and on the entire equine industry.

(109) The UK authorities consider that a fixed rate levy provides certainty and clarity for both betting and racing organisations. Alternative options, such as voluntary payments from offshore betting operators to racing, have not proved sustainable over time and have failed to correct discriminatory arrangements between online and land-based operators. Setting a fixed target yield would in effect mean dictating the size and/or structure of the racing industry. Alternatively, covering a set percentage of costs would risk creating perverse incentives for racing to increase its costs, as the impact of any such increase in costs would eventually be borne by betting.

(110) The Commission agrees that the new Levy Scheme effectively ensures a fair distribution of the financial burden between the betting and the racing industry, as well as within the horse race betting industry, for the funding of horse races. The reformed Levy Scheme warrants that (i) betting operators contribute to the financing of horse races; (ii) off-shore betting operators that were not subject to the previous Levy Scheme, but that were benefitting from the organisation of horse races by placing bets in British horse racing, will be liable to the Levy in the same manner as the land-based betting operators; (iii) spread betting operators and on-course betting operators will be liable to the Levy in the same manner as the other betting operators, putting an end to the differential treatment. The measure is suited to ensuring fair competition amongst horse race betting operators.

(111) The Commission has acknowledged the interdependency between the betting and racing industry in its Green Paper of 24 March 2011 on online gambling in the internal market stating that "*a specificity of horse racing compared to other sports is that its primary attraction is for gamblers. Thus, to a greater degree than other*

sport events, its viability will depend on sufficient proportions of gambling revenues being reinvested into the activity"[22].

(112) The Commission takes note that alternative methods to a fixed rate levy, such as a voluntary contribution or a flat amount, do not suffice to create a level playing field among betting operators, failing to address competition concerns. In addition, the chosen form of aid (a levy on the betting profit (i.e. GGY generated in the British horseracing market)) guarantees that the amount of aid is directly linked to the business performance of betting operators.

(113) On the basis of the foregoing, the Commission considers that the notified measure is appropriate to achieve the objective of ensuring the continuity of horse racing and ensuring fair competition in the British horse race betting market.

6.2.4.2. Incentive effect

(114) The UK authorities claim that without this aid, the long-term effect would be a decrease in the horse racing companies' resources, which would lead to the contraction or even collapse of the sector. Given that the activities of the horse racing companies are financed by the income from betting, the aid measure has a direct effect on the behaviour of horse racing companies by encouraging them to maintain and develop their horse race organisation activities.

(115) The UK considers that adopting a fixed rate, rather than a fixed amount, payable by betting operators means that payments will adjust in line with the level of benefit they derive from the racing product, avoiding thus the risk of creating perverse incentives for racing to increase its costs knowing that they would be covered by the betting operators regardless of their level of profits.

(116) According to the UK, the measure is the best way of ensuring the right incentives are in place while ensuring the continuity of horse racing and fair competition. Indeed, the measure has a direct effect on the behaviour of the horse racing industry (e.g. racecourses, breeding groups, veterinary groups, trainers and stable staff) by encouraging it to maintain and develop the racing product.

(117) The Commission agrees that in the case at hand, the measure has an incentive effect in that it encourages racing companies to organise horse races. As already stated in recital (112), the chosen form of aid (a rate levied upon the GGY) ensures that the amount of aid is directly related to the profit level of the betting operators. Therefore, the more bets are placed on British horse races, the more levy yield and consequently, the more funding for the racing companies. There is therefore an incentive for horse racing companies to maintain and develop the racing product so that more bets can be placed on horse races.

(118) The Commission concludes that the aid measure has an incentive effect since it is capable of modifying the behaviour of horse racing companies by incentivising the organisation of a larger number and more attractive horse races. Indeed, given that the activities of the horse racing companies are financed by the income from horse race betting, the aid measure has a direct effect on the behaviour of horse

[22] European Commission Green Paper of 24 March 2011 on online gambling in the Internal Market, COM(2011) 128 final, p.35

racing companies by encouraging them to maintain and develop their horse racing activities.

6.2.4.3. Proportionality of the aid

(119) An aid measure is considered to be proportionate only if the common interest objectives could not be reached with less aid and less distortion of competition. The amount of the aid must be limited to the minimum needed for the common interest objectives to be attained. In the present case, the Commission considers that the UK authorities have designed the measure in such a way as to diminish the possible amount of State aid involved and to minimise the distortions of competition arising from the measure.

(120) The Commission is of the opinion that the UK authorities have been able to demonstrate that a rate set at 10% of GGY is below the funding needs of a sustainable horse racing sector (see section 5.2.1).

(121) The estimated yield of the Levy does not exceed this funding need (£133 million in 2014) and it can be observed that this would still be the case under the more optimistic forecasts (£90 million to £100 million) mentioned by RGA (see recital (30)).

(122) In addition, the UK authorities have shown that the Levy yield finances costs which appear necessary for the sustainability of horse racing. Without the funding provided by the Levy, there would therefore likely be a decrease in the horse racing companies' resources, which would ultimately lead to the contraction of the sector. The commercial payments which are duly taken into account in the calculation of the funding need of the horse racing sector are not sufficient for a sustainable horse racing activity in the future since they do not cover the costs of organizing horse races.

(123) The Commission understands that the Frontier Economics report did not contemplate a number of sector-wide costs, focusing exclusively on the costs of individual racecourses. Costs like finance and capital, prize money, and veterinary and education are however essential to secure a sustainable horse racing sector. Covering the shortfall in prize money seems also justified with a view to organize more competitive horse races..

(124) Contrary to what the complaint argues, the fact that the new Scheme provides for a flat-rate levy will not lead to overcompensation:

- First, the UK authorities claim that the Racing Authority, the new legal entity entrusted with spending decisions, will distribute the Levy funds. The UK has explained that there is currently a process of consultation across the industry on the operational details on how the authority will operate and that the transfer of functions will not take place before 2018. The UK authorities have committed that they will only proceed with the transfer of functions and duties to the Racing Authority if they have sufficient guarantees that processes will be in place to ensure that levy recipients will not be overcompensated. This will be ensured by establishing a consultation process with relevant parties and by laying down criteria for allocating expenditure.

- Second, the UK authorities have explained that there will be a mechanism in place so as to recover misappropriated funds and to recover unspent funds. It is also envisaged that the Racing Authority's activities and expenditure decisions should be openly published in an annual report.

- Third, the UK authorities have committed to inform the Commission of the future structure of the Racing Authority, as well as of the key changes from the current Horserace Betting Levy Board organization, where these are not of purely formal or administrative nature.

(125) UK authorities have committed to review the new Levy Scheme within seven years of the legislation coming into force. The revision mechanism should guarantee that the Levy is adapted to changes in the horse racing market.

(126) In light of the foregoing, the Commission concludes that the measure is proportionate since the UK authorities have designed the Levy in such a way as to minimise the possible amount of State aid involved and to minimise the distortions of competition arising from the measure.

6.2.5. Balancing the positive with the negative effects: effect on competition and on trade between Member States

(127) The UK authorities consider that the measure is not likely to adversely affect trade conditions to an extent contrary to the common interest. The UK also argues that the measure has been designed in such a way as to minimise both the State aid involved as well as the potential distortion of competition arising from it.

(128) The Commission considers that the measure has the following positive effects:

- It eliminates the differential treatment between betting operators (offshore and UK-based, as well as on-course and off-course betting operators), distributing fairly the burden of financing horse races. The measure enhances competition because it ensures that all betting operators that benefit from the organization of horse races are subject to the Levy.

- It supports the horse racing and equine sector based on the mutual interest that the racing industry and betting operators have in the organisation of races.

(129) The new Levy Scheme might however distort competition and affect trade within the EU, although not, in the opinion of the Commission, to an extent contrary to the common interest for the following reasons:

- The amount of aid is less than the net cost of organizing sustainable horse races over time. It ensures that betting will not be obliged to contribute more than the costs of mutual interest for betting and horse racing and that the horse racing sector will not be overcompensated.

- The de *minimis* threshold reduces the risk that the Levy constitutes a barrier to entry for small betting operators. This supports the development of competition in the betting market.

- The Levy has been in place since 1961 and since 2002 it has slightly varied from 10% to 10.75%. Given that the betting market managed to grow under these conditions, it seems unlikely that the new Levy of 10% on GGY can have a particularly negative impact on the betting market.

(130) The Commission concludes that the positive effects of the measure outbalance the potential negative effects, thus minimising the potential distortion of competition and effect on trade.

6.2.6. *Compatibility of the Levy with other Treaty provisions*

(131) As already pointed out in section 6.2.1, given the close link between the aid to horse racing and the collection of the Levy, it is also necessary to ensure that the Levy itself does not infringe the principles of the Treaty and more precisely the principle of freedom to provide services set out in Article 56 TFEU and the principle of non-discrimination in taxation matters as set out in Article 110 TFEU.

(132) The new Levy scheme will apply to all betting operators taking bets on UK horse races. They will be subject to the same conditions, independently from nationality, physical location and place of registry of these betting operators. The aid does not, therefore, restrict the freedom to provide horse racing betting services under Article 56 TFEU. In addition, given that the aid is targeted at all racecourses in the UK, all betting operators will equally benefit from the scheme since they will be able to place bets on a larger number and more attractive horse races.

(133) The aid does not discriminate between betting operators which will all pay 10% of their GGY beyond £500,000. The principle of non-discrimination set out in Article 110 TFEU is therefore also respected.

(134) From the above analysis, the Commission concludes that the new Levy scheme which finances the aid to the horse racing companies is compatible with the principles of freedom to provide services and non-discrimination. The method of financing the measure is therefore not likely to adversely affect trading conditions to an extent contrary to the common interest.

6.2.7. *Conclusion on compatibility of the measure*

(135) The Commission concludes that the amendments to the Horserace Betting Levy can be considered compatible with the internal market pursuant to Article 107(3) c) TFEU. The complainants have not provided any elements that would put in question the compatibility assessment of the Horserace Betting Levy. The UK authorities have clearly justified in recitals (37) to (63) that the new Levy scheme is necessary and proportional since it constitutes the appropriate instrument to achieve an objective of common interest, which not only is the rational development of the horseracing sector, but also to ensure fair distribution of the financial burden between the betting and racing sectors. The UK authorities have also demonstrated that the new Levy scheme has an incentive effect on the beneficiaries, the horseracing organizations, and that the Levy does not introduce unnecessary distortions of competition.

6.3. Transparency of the aid measure

(136) The measure fulfils the requirement of transparency. As indicated in paragraph (24), the Racing Authority for Britain -the entity in charge of managing the Levy funds- will be required to consult the betting industry on its strategy for the use of the levy funds. The Racing authority will also publish an annual report on how

the Levy funds were spent in pursuit of the mutual interest, including the identity of its beneficiaries and the amounts they received.

6.4. Additional observations

(137) Since the United Kingdom notified on 29 March 2017 its intention to leave the European Union, pursuant to Article 50 of the Treaty on European Union, the Treaties will cease to apply to the United Kingdom from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council in agreement with the United Kingdom decides to extend this period. As a consequence, and without prejudice to any provisions of the withdrawal agreement, the present decision only applies if (i) the United Kingdom is still a Member State on the first day of the period for which the notified scheme is approved, and (ii) to individual aid granted[23] under the notified scheme until the United Kingdom ceases to be a Member State.

7. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3) c) of the Treaty on the Functioning of the European Union

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

[23] According to the case-law of the CJEU, aid must be considered to be granted at the time that an unconditional right to receive it is conferred on the beneficiary under the applicable national rules (See Case C-129/12 Magdeburger Mühlenwerke EU:C:2013:200, paragraph 40).