



EUROPEAN COMMISSION

Brussels, 18.12.2020
C(2020) 8965 final

PUBLIC VERSION

This document is made available for
information purposes only.

Subject: State aid SA.44830 (2016/FC) – Netherlands – Prolongation of gambling licences in the Netherlands

Excellency,

1. PROCEDURE

- (1) On 8 March 2016, the Commission received a complaint from a party active in the gambling and lottery sector (“the complainant”) regarding alleged unlawful and incompatible aid granted by the Netherlands to several lotteries and betting operators operating in that Member State .
- (2) On 30 March 2016, the Commission services forwarded a non-confidential version of the complaint to the Dutch authorities for comments, along with a number of questions. The Dutch authorities replied by letter of 22 July 2016. The Commission services sent further requests for information on 16 August 2016, 1 September 2017, 2 December 2019 and 16 June 2020, to which the Dutch authorities replied on 11 October 2016, 7 December 2017, 7 February 2020 and 18 September 2020.
- (3) On 30 May 2017, the Commission services sent the complainant a letter explaining its preliminary assessment that no unlawful aid had been granted. The complainant replied by letter of 30 June 2017, contesting the Commission services’ assessment and providing further information. On 27 June 2019, the Commission services sent the complainant a second letter explaining its preliminary assessment, to which the complainant replied by letter of 22 August 2019, maintaining its view that unlawful aid had been granted.

Zijne Excellentie de Heer Stef Blok
Minister van Buitenlandse Zaken
Rijnstraat 8
NL - 2515 XP Den Haag
NEDERLAND

2. DESCRIPTION

2.1. The contested measure

- (4) The contested measure consists of two elements.
- The first element of the complaint is the adoption by the Dutch State Secretary for Security and Justice on 7 October 2014 of a policy rule. Article 3 of the policy rule lists several interests that shall weigh heavily in the balance of interests conducted by the Governing Council (*Raad van Bestuur*) of the Dutch Gambling Authority (*Nederlandse Kansspelautoriteit* or “Gambling Authority”) when deciding on a request for a gambling licence.¹ Article 3(b) stresses the importance of extending, until 1 January 2017, sports betting, horse race betting, lottery and casino licences to incumbent licence holders whose licences expire before 1 January 2017.
 - The second element of the complaint is the adoption by the Gambling authority on 25 November 2014 of decisions implementing the aforementioned policy rule by renewing the expiring licences of six incumbent licence holders.

2.2. Legal Framework

2.2.1. The Gambling Act

- (5) Article 1(1)(a) of the 1964 Dutch Gambling Act² prohibits giving the opportunity to compete for prizes or premiums, if the winners are designated by means of any determination of chance on which the participants generally cannot exercise a predominant influence, unless a permit has been granted under the same Act.³
- (6) Article 3 of the Gambling Act states that a permit will only be granted if the revenues of the gambling activity serve the common interest. For certain specific types of gambling, specific provisions apply (i.e. for the State Lottery, instant lottery, sports gambling, the totalisator (horse races), the lotto, casinos, competitions (‘prijsvragen’) and gambling machines. The Gambling Act provides that one exclusive licence is granted for each form of gambling⁴. There is an exception for so-called charity lotteries, which are subject to a general regime set out in Title 1 of the Gambling Act.

¹ Staatscourant Nr. 28930 of 13 October 2014, “*Beleidsregel van de Staatssecretaris van Veiligheid en Justitie van 7 oktober 2014*”. See <https://zoek.officielebekendmakingen.nl/stcrt-2014-28930.html>.

² “Wet op de kansspelen”. See <https://wetten.overheid.nl/BWBR0002469/2018-07-28>, as amended.

³ “*Behoudens het in Titel Va van deze wet bepaalde is het verboden: a. gelegenheid te geven om mede te dingen naar prijzen of premies, indien de aanwijzing der winnaars geschiedt door enige kansbepaling waarop de deelnemers in het algemeen geen overwegende invloed kunnen uitoefenen, tenzij daarvoor ingevolge deze wet vergunning is verleend; [...].*”

⁴ Article 9(1), Article 14b(1), Article 16(1), Article 24 refer to ‘*één rechtspersoon*’ (one legal person).

- (7) Article 33e of the Gambling Act provides that the holders of gambling licences are obliged to pay the Gambling Authority a licence fee which is meant to cover the Gambling authority's running costs. Article 33f of the Gambling Act sets the level of the license fee, which is dependent on the nominal value of the participation tickets sold and ranges from EUR 1 000 to EUR 50 000.⁵

2.2.2. *The Gambling Decree*

- (8) The 1997 Gambling Decree⁶ elaborates on some articles of the Gambling Act. It contains more details e.g. on the conditions for acquiring a gambling licence and regarding the fees due for applying for a licence.
- (9) Pursuant to Article 3a of the Gambling Decree, gambling operators applying for a license under Article 3 of the Gambling Act (see recital (6)) are obliged to pay the Gambling Authority an administrative fee per licence of between EUR 226 and EUR 2 268 as compensation for the application procedure, which is intended to cover the cost of assessing their applications. The fee has to be paid annually.
- (10) Pursuant to Article 2(b) of the Gambling Decree, as it applied during the timeframe covered by the complaint, gaming operators that obtained a license under Article 3 of the Gambling Act were required to remit the revenues generated with the sale of participation tickets to the beneficiaries⁷ indicated in the license (see Section 2.3). The remittance should amount to at least 50% of the nominal value of participation tickets sold. Article 2b of the Gambling Decree was amended on 1 January 2020 to the effect that gaming operators have to remit at least 40%, rather than 50%, of the nominal value of participation tickets sold.
- (11) For gaming operators not falling under the general regime of Title 1 of the Gambling Act, the percentage to be remitted to entities that serve the common interest is specified in the license.

2.2.3. *The Gambling Authority*

- (12) The Gambling Authority was established in 2012 pursuant to Article 33 of the Gambling Act. Pursuant to Articles 33 to 35 of the Gambling Act, the Gambling Authority is managed by a Governing Council, the members of which are appointed by the State Secretary for Justice and Security. The administrative rules of procedures of the Governing Council are subject to the approval of the Minister of Justice and Security. The Gambling Authority performs regulatory functions related to gambling, such as the allocation of licences and the administrative enforcement of infringements of the Gambling Act. It is financed through a levy imposed on licensees.

⁵ If the nominal value of lottery tickets sold exceeds EUR 50 million, the amount of EUR 50 000 is increased with 1/500 of the amount that exceeds EUR 50 million.

⁶ “Kansspelenbesluit”. See <https://wetten.overheid.nl/BWBR0009067/2020-01-01>, as amended.

⁷ The beneficiaries of the remittance serve the common interest, see recital (5), and are referred to in the license.

- (13) The Gambling Authority is the successor of an oversight body (“College van Toezicht”), established on 18 May 1995, which monitored compliance with the Gambling Act and which advised the Minister of Justice on the execution of the Gambling Act and the granting of licences.

2.3. Beneficiaries

2.3.1. *Nationale Postcode Loterij N.V.*

- (14) The “Nationale Postcode Loterij N.V.”⁸ is a so-called charity lottery established in 1989 that sells lottery tickets where part of the lottery ticket number is based on the postal code of the players. Players can win money prizes or prizes in kind. Nationale Postcode Loterij N.V. is owned by “Holding Nationale Goede Doelen Loterijen N.V.”.
- (15) The Articles of Association of the Nationale Postcode Loterij N.V. provide that it does not seek to make any profits.⁹
- (16) By decision of 25 November 2014, the Gambling Authority granted a charity lottery licence (consisting of a de facto renewal of the expiring licence) to Nationale PostCode Loterij N.V. for the period of 1 January 2015 to 31 December 2016¹⁰. In this license it is stated that the Nationale Postcode Loterij N.V. has to remit at least [*ten minste*] 50% of the nominal value of participation tickets sold to charities active in the field of health, international aid, arts/culture, societal/social, environment/nature/animals and sports/recreation.
- (17) For all charity lotteries, including the Postcode Loterij N.V. and the companies described in Sections 2.3.2, 2.3.3 and 2.3.4, the remainder of the revenues that is left after the compulsory remittance to goals that serve the common interest is used as prizes and to cover operational costs. The license holder may only incur costs that are directly related to the organization of the lottery for which the license has been granted and that can be counted as part of the normal operating costs. In order to limit these costs, the license holder is obliged to operate the lotteries organized under the license in an efficient and effective manner (laid down in Section C4 of the licenses of the different charity lotteries). It follows that license holders cannot realise any profits.

2.3.2. *BankGiro Loterij N.V.*

- (18) BankGiro Loterij N.V. is a charity lottery established in 1961 that sells lottery tickets where part of the lottery ticket number is based on the bank card number of the players. Players can win money prizes or prizes in kind. BankGiro Loterij N.V. is owned by Holding Nationale Goede Doelen Loterijen N.V.

⁸ N.V. stands for “naamloze vennootschap” which is the equivalent of a joint stock company.

⁹ Wijziging Statuten National Postcodeloterij N.V. of 11 March 2016, Article 2(1).

¹⁰ Staatscourant Nr. 34950 of 5 December 2014, “*Vergunning postcodeloterij 2015/2016*”. See: <https://zoek.officiëlebevestigingen.nl/stcrt-2014-34950.html>.

- (19) In the Articles of Association of the Bankgiro Loterij N.V. it is laid down that it does not seek to make any profits.¹¹
- (20) By decision of 25 November 2014, the Gambling Authority granted a charity lottery licence (consisting of a de facto renewal of the expiring licence) to BankGiro Loterij N.V. for the period of 1 January 2015 to 31 December 2016¹². In this license it is stated that the BankGiro Loterij N.V. has to remit at least [*ten minste*] 50% of the nominal value of participation tickets sold to charities active in the same fields as referred to in recital (16).

2.3.3. *VriendenLoterij N.V.*

- (21) VriendenLoterij N.V. is a charity lottery established in 1989 that sells lottery tickets where the lottery ticket number is based on the players' phone numbers. Players can win money prizes or prizes in kind. VriendenLoterij N.V. is owned by Holding Nationale Goede Doelen Loterijen N.V..
- (22) In the Articles of Association of the VriendenLoterij N.V. it is laid down that it does not seek to make any profits.¹³
- (23) By decision of 25 November 2014, the Gambling Authority granted a charity lottery licence (consisting of a de facto renewal of the expiring licence) to VriendenLoterij N.V. for the period of 1 January 2015 to 31 December 2016¹⁴. In this license it is stated that the VriendenLoterij N.V. has to remit at least [*ten minste*] 50% of the nominal value of participation tickets sold to charities active in the same fields as referred to in recital (16).

2.3.4. *Samenwerkende Non-Profit Loterijen*

- (24) Samenwerkende Non-Profit Loterijen is a charity lottery foundation that groups together five organisations that organise six lotteries in total. Players can win prize money or prizes in kind. Samenwerkende Non-Profit Loterijen was established in 2008, though its constituent members have existed for longer, in one case since 1949.
- (25) In the Articles of Association of the Samenwerkende Non-profit Loterijen, and as is also apparent from the name, it is laid down that it does not seek to make any profits.¹⁵

¹¹ De statuten van de naamloze vennootschap BankGiro Loterij N.V. last changed on 8 January 2008, Article 2(1).

¹² Staatscourant Nr. 34940 of 5 December 2014, "*Vergunning bankgiro loterij 2015/2016*". See <https://zoek.officielebekendmakingen.nl/stcrt-2014-34940.html>.

¹³ De statuten van de naamloze vennootschap VriendenLoterij N.V. last changed on 1 January 2011, Article 2(1).

¹⁴ Staatscourant Nr. 34944 of 5 December 2014, "*Vergunning vriendenloterij 2015/2016*". See <https://zoek.officielebekendmakingen.nl/stcrt-2014-34944.html>.

¹⁵ STATUTENWIJZIGING STICHTING SAMENWERKENDE non-profit LOTERIEN of 27 July 2017, Article 2(3).

- (26) By decision of 25 November 2014, the Gambling Authority granted a charity lottery licence (consisting of a de facto renewal of the expiring licence) to Samenwerkende Non-Profit Loterijen for the period of 1 January 2015 to 31 December 2016¹⁶. In this license it is stated that the Samenwerkende Non-Profit Loterijen has to remit at least [*ten minste*] 50% of the nominal value of participation tickets sold to five specific charities.¹⁷

2.3.5. *Stichting de Nationale Sporttotalisator*

- (27) Stichting de nationale sporttotalisator was founded in 1961 and holds the exclusive licences for sports betting (“sportprijsvragen”¹⁸), the instant lottery¹⁹, and “De Lotto”²⁰. On 1 January 2016, Stichting de Nationale Sporttotalisator merged with “Staatsloterij B.V.”²¹ and both are now part of the “Nederlandse Loterij B.V.” As part of this process, Stichting de Nationale Sporttotalisator, a charity, was converted into a limited liability company, Lotto B.V.
- (28) The instant lottery is a type of lottery in which the winning ticket is predetermined, i.e. before the tickets are distributed. The Lotto groups games of chance where players have to predict a number of “symbols” that are then drawn at random (by lottery) from an existing, larger set of symbols. The typical example is a game where the player has to pick six numbers and the winning series of numbers is drawn from a set of balls every week. Another example is “Eurojackpot”, a Europe-wide lotto game. Players can win prize money or prizes in kind.
- (29) By decision of 25 November 2014, the Gambling Authority granted licences for Lotto, the instant lottery and sports betting (consisting of a de facto renewal of the expiring licences) to Stichting de Nationale Sporttotalisator for the period of 16 January 2015 to 31 December 2016²².

¹⁶ Staatscourant Nr. 34946 of 5 December 2014, “*Vergunning SNL-Loterij 2015/2016*”. See <https://zoek.officielebekendmakingen.nl/stcrt-2014-34946.html>.

¹⁷ 1. The *Nationale Stichting Grote Clubactie*. 2. The *Vereniging Scouting Nederland*. 3. The *Stichting Koningin Wilhelminafonds voor de Nederlandse Kankerbestrijding*. 4. The *Nationale Vereniging De Zonnebloem*. 5. The *Stichting Nationaal Jeugd Fonds Jantje Beton*.

¹⁸ Pursuant to Article 16(1) of the gambling act, only one legal person at a time can hold the sports betting licence.

¹⁹ Pursuant to Article 14b(1) of the gambling act, only one legal person at a time can hold the instant lottery licence.

²⁰ Pursuant to Article 27(b) of the gambling act, only the legal person that holds the licence for sports betting can hold the Lotto licence.

²¹ “B.V.” stands for “Besloten Vennootschap”, the equivalent of a private limited liability company.

²² Lotto and sports betting: Staatscourant Nr. 34949 of 5 December 2014, “*Vergunning sportprijsvragen en lotto 2015/2016*”. See <https://zoek.officielebekendmakingen.nl/stcrt-2014-34949.html>.

Instant lottery: Staatscourant Nr. 34943 of 5 December 2014, “*Vergunning instantloterij 2015/2016*”, see: <https://zoek.officielebekendmakingen.nl/stcrt-2014-34943.html>.

- (30) At least 47.5% of the revenues generated with the instant lottery should be disbursed as price money (Article 14b(3) Gambling Act). Moreover, 47.5% of the combined revenues generated with the sports betting and De Lotto should be disbursed as price money (Article 16(3) and 27b(3) Gambling Act).
- (31) In the license for sports betting and the lotto it is stated that the Stichting de Nationale Sporttotalisator has to remit the total value of sports bets placed corrected for price money and costs made plus 18% of the nominal value of all lottery tickets sold to the Dutch Olympic Committee (72,46%) and the Stichting Aanwending Loterijgelden Nederland who distributes it among a variety of charities such as the Aids Fund ('Aidsfonds'), Diabetes Fund ('Diabetesfonds'), The Dutch Hart Association ('Hartstichting'), the Dutch Cancer Society ('KWF Kankerfonds') (27,54%). For the instant lottery, the nominal value of all physically and instant lottery tickets sold corrected for price money and costs made has to be remitted to the Dutch Olympic Committee and the Stichting Aanwending Loterijgelden Nederland.

2.3.6. *Sportech Racing B.V.*

- (32) Sportech Racing B.V., established in 1993 and doing business under the brand name "Runnerz", holds an exclusive licence for offering bets on horse races ("totalisator")²³. Players can win prize money. Sportech Racing B.V. changed its name into ZEBetting & Gaming Nederland B.V. after it was taken over from Sportech PLC by R.B.P. Luxembourg S.A. in 2018.
- (33) By decision of 25 November 2014, the Gambling Authority granted a licence for horse racing (consisting of a de facto renewal of the expiring licence) to Sportech Racing B.V. for the period of 1 January 2015 to 31 December 2016²⁴. In this license it is stated that Sportech Racing B.V. has to remit 2.5% of the total value of bets placed to the Dutch Trotting and horse racing Foundation ('Stichting Nederlandse Draf- en Rensport'). If the difference between the amount due to the Dutch Trotting and horse racing foundation according to the adopted annual accounts and the monthly payments relating to the relevant calendar year is positive, the license holder remits this amount also to the Dutch Trotting and horse racing foundation.
- (34) The total of all stakes, except for deductions permitted by or pursuant to the law, will be divided among those who bet on the winner or one of winners (Article 23(2) Gambling Act). The deductions permitted by law constitute the 2.5% referred to in the previous recital and costs, see also recital (17).

3. POSITION OF THE COMPLAINANT

- (35) The complainant considers that all of the licences granted by the Gambling Authority on 25 November 2014 to the beneficiaries listed in Section 2.3 constitute State aid within the meaning of Article 107(1) TFEU.

²³ Pursuant to Article 24 of the gambling act, only one legal person at a time can hold the "totalisator" licence.

²⁴ Staatscourant Nr. 34941 of 5 December 2014, "*Vergunning totalisator 2015/2016*". See <https://zoek.officielebekendmakingen.nl/stcrt-2014-34941.html>.

- (36) The complainant argues that the Netherlands has foregone State resources since it allegedly did not receive adequate remuneration for granting the licences. The complainant believes that, under competitive conditions, the revenues for the Dutch State would have been significantly higher than the fees received by the Gambling Authority (see recitals (7) and (9)). To that effect, the complainant cites an agreement between two Dutch political parties that formed a government in 2012. In this agreement, the two parties present their plans for the years 2012-2016.²⁵ At the time, the two parties stated that the proceedings of lottery licences to be granted by auction would be EUR 10 million. The complainant considers that “similar amounts” could be expected from the granting of sports betting and totalisator licences.
- (37) The complainant considers that the granting of exclusive licences at a price allegedly below market rate represents a “significant advantage” for the beneficiaries, since it “significantly improves” their economic and financial position. According to the complainant, the Commission considered in the *OPAP Decision*²⁶ that the extension of an existing licence confers an economic advantage on the licence holder if the net present value of the expected revenues to be achieved on the basis of the rights granted, taking into account a reasonable return, would be higher than the fees and considerations paid by the licence holder to the State.
- (38) The complainant cites a 2014 market report from the Gambling Authority²⁷ which shows that the total turnover of the licensed lotteries amounted to EUR 1.9 billion in 2014, whereas the turnover for sports betting (“sportprijsvragen” and the “totalisator”) amounted to EUR 91.2 million. By comparing these turnovers to the limited fees paid by the beneficiaries, and without further elaboration, the complainant concludes that it “*seems obvious that the net present value of the licences exceeds by far the amount of the fees paid by the licensees to the [Gambling Authority]*”.
- (39) The complainant has further argued that the exclusive right to operate a particular economic activity and generate revenues and profits from it constitutes an economic advantage in and of itself, regardless of the actual size of the profit margin the licensee is able to achieve. The complainant considers that in the present case it is “*obvious that the economic and financial situation of the incumbent operators would have been worse without the grant of the exclusive licence by the Dutch authorities, since they would simply not have been able to run their business.*” In the view of the complainant this finding is confirmed by the fact that other market players expressed an interest in or actually applied for the licences concerned, confirming that they give rise to an economically viable activity.
- (40) The complainant also argues that the contested measure is selective, since it is to the exclusive benefit of the licensees concerned, and that it distorts

²⁵ “*Bruggen slaan. Regeerakkoord VVD – PvdA*”, 29 October 2012.

²⁶ Commission Decision of 4 January 2013 in case SA.33988 – Greece: Arrangements for the extension of OPAP's exclusive right to operate 13 games of chance and the granting of an exclusive licence to operate Video Lottery Terminals, OJ C 1, 4.1.2013, p. 7, recitals 28-29 and 32.

²⁷ “*Marktscan landgebonden kansspelen 2014*”, report of 22 December 2015.

competition and affects trade between Member States, because it allegedly removes any competition in and for the respective gambling markets by depriving potential new entrants, most of whom are established in other Member States, from competing to apply for the exclusive licences.

- (41) The complainant argues, lastly, that there are no compatibility grounds for the contested measure, and therefore concludes that it constitutes unlawful and incompatible State aid.

4. POSITION OF THE DUTCH AUTHORITIES

- (42) The Dutch authorities consider that the measure does not constitute State aid. In particular, they argue that it does not involve the transfer of any State resources and that it does not confer an advantage on any of the alleged beneficiaries.

4.1. State resources

- (43) The Dutch authorities consider that the licences concerned by the contested measure do not have any market value because they are not transferable. In this respect, they refer to the “NOx” judgment of the European Court of Justice²⁸, in which the Court held that emission allowances had a market value because they were tradable. Since the licences do not have a market value, the Dutch authorities consider that they do not forego State resources in extending them.

4.2. Advantage

- (44) The Dutch authorities consider that restricting the gambling licences to a limited number of operators is justified by the nature and purpose of gambling legislation in the Netherlands, which limits the supply of gambling services to prevent gambling addiction, protect consumers and combat crime and illegal activities. The Dutch authorities argue that the selection of the incumbent licensees was not discriminatory in light of the ongoing transition of a very strict regulatory framework, under which new operators are excluded from the market, to a situation in which there is room for new operators to enter the market.
- (45) The Dutch authorities further consider that they have never asked for licensing fees in return for awarding gambling licences, and so the contested measure does not constitute any derogation from the standard situation in the gambling sector in the Netherlands.
- (46) The Dutch authorities, based on the structure of the law in combination with the licenses (see Sections 2.2 and 2.3) take the view that the license holders do not seek to make any profits and that they do not obtain an advantage by holding a license. This follows from the fact that the revenues generated with the sale of lottery tickets need to be used for (i) prizes, (ii) payment of

²⁸ Judgment of the Court of Justice of 8 September 2011, *European Commission v the Netherlands*, ECLI:EU:C:2011:551.

gambling taxes [*kansspelbelasting*], (iii) remittance to charities and (iv) cover the operational costs.²⁹

- (47) The Dutch authorities therefore consider that the contested measure does not confer any advantage on the beneficiary undertakings.

5. ASSESSMENT

- (48) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on one or more undertakings. Third, that advantage must be selective. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (49) The granting of special or exclusive rights without adequate remuneration in line with market rates can constitute foregoing State revenues and the conferral of an advantage. In such cases, it needs to be established whether the State acts as a regulator that pursues policy objectives by making the selection process of the undertakings concerned subject to qualitative criteria (established *ex ante* in a transparent and non-discriminatory manner). When the State acts as a regulator, it can decide legitimately not to maximise the revenues which could otherwise have been achieved without falling under the scope of State aid rules, provided that all the operators concerned are treated in line with the principle of non-discrimination, and that there is an inherent link between achieving the regulatory purpose and the foregoing of revenue.³⁰
- (50) On the other hand, if the State grants or extends an exclusive right to an economic operator and leaves the right holder with no more than the minimum return necessary to cover its operational and capital costs from exercising the right, plus a reasonable profit, it does not confer an advantage.³¹ In such circumstances, the recipient of the exclusive right shall not be considered to have enjoyed a benefit that it could not have obtained under normal market conditions.
- (51) It should also be noted that when reviewing whether a specific transaction contains State aid elements, it is necessary to take into account the context in which that transaction takes place and to consider all relevant elements³², such as an obligation to remit part of the revenues to goals that serve the common

²⁹ See a report issued by the Gambling authority: *Marktscan landgebonden kansspelen 2015*, dated 29 September 2016, available at: <https://kansspelautoriteit.nl/nieuws/2016/marktscan-verschonen/>.

³⁰ See points 53 to 55 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1, and the case-law referred to there.

³¹ See footnote 26. Upheld by the General Court in Case T-58/13, *Club Hotel Loutraki and Others v Commission*, EU:T:2015:1 and the Court of Justice in Case C-131/15 P, *Club Hotel Loutraki and Others v Commission*, EU:C:2016:989.

³² Case T-244/08, *Konsum Nord v Commission*, EU:T:2011:732, paragraph 57 and the case-law cited.

interest. The examination of a transaction outside its context could lead to purely formal results which do not correspond to economic reality.³³

- (52) In the Netherlands it is generally prohibited to engage in gambling activities. Only if the Gambling authority grants a license in line with the applicable rules, in particular the Dutch Gambling Act and Gambling Decree, a legal person can offer gambling activities to the Dutch population.
- (53) In the present case, the beneficiaries (i.e. the license holders) identified in the complaint are obliged under the Gambling Act and the Gambling Decree to contribute to goals that serve the common interest:
- It follows from the preamble of the license from charity lotteries that they are awarded a license under Article 3 of the Gambling Act.³⁴ Article 3 of the Gambling Act provides that the revenues generated by operators that received a license under this provision cannot be retained, but must be used to serve the common interest. Moreover Article 2b of the Gambling Decree provides that such lotteries have to remit the revenues generated with the sale of participation tickets to the beneficiaries referred to in their license. During the relevant period, the remittance amounted to at least 50% of the nominal value of lottery tickets sold. These obligations cover (i) Nationale Postcode Loterij N.V.; (ii) BankGiro Loterij N.V.; (iii) Vriendenloterij N.V. (collectively owned by Holding Nationale Goede Doelen loterijen N.V.); and (iv) Samenwerkende Non-profit Loterijen (see recitals (16), (20), (23) and (26)).
 - As regards Lotto B.V., pursuant to Articles 14b(2) (instant lottery), 16(2) (“sporttotalisator”) and 27b(2) (“Lotto”) of the Gambling Act, it is obliged to remit to goals that serve the common interest the full amount of revenues from its activities minus prize money and costs³⁵. Moreover, pursuant to Articles 14b(3), 16(3) and 27b(3) of the Gambling Act, at least 47.5% of the proceeds from its activities should be paid out in prize money. The obligation to support goals that serve the common interest also follows from the license (see recital (29)).
 - As regards Sporttech Racing B.V., pursuant to Article 25 of the Gambling Act, its licence is subject to certain conditions, including the determination of the part of the total stakes that will not be paid out to punters and the earmarking of these funds. Sporttech Racing B.V.’s licence specifies that the part of the total stakes that are not paid out to punters is 2.5%, and that it is to be remitted to the Dutch Trotting and horse racing foundation. If the difference between the amount due to the Dutch Trotting and horse racing foundation according to the adopted annual accounts and the monthly payments relating to the relevant calendar year is positive, the license holder remits this amount also to the Dutch Trotting and horse racing foundation (see recital (33)).

³³ Case T-58/13, *Club Hotel Loutraki and Others v Commission*, EU:T:2015:1, paragraph 91.

³⁴ See footnote 10, 12, 14, 16

³⁵ Of this amount, 72.46% is donated to “Vereniging Nederlands Olympisch Comité Nederlandse Sport Federatie” and 27.54% is donated to “Stichting Aanwending Loterijgelden Nederland.”

- (54) The obligation to remit all proceeds of the gambling activities (revenues minus prizes and reasonable costs) to goals that serve the common interest is imposed on the incumbent operators and is an inherent part of the licences they hold. It follows that those operators cannot make profits in the usual meaning of the term, and hence certainly not a profit that is higher than a reasonable profit. A regular distribution of the profits to shareholders is therefore excluded.
- (55) This fact is borne out by financial data from the incumbent operators. According to figures provided by the Dutch authorities, in the years 2015-2016 (the period subject to the complaint), the weighted average profit margin³⁶ of Holding Nationale goede doelen loterij (the parent company of Nationale Postcode Loterij N.V., BankGiro Loterij N.V., and VriendenLoterij N.V.) was 0.14%, of Samenwerkende Non-profit loterijen was 0%, of Lotto B.V. was -0.002%, and of Sporttech Racing B.V. was -0.66%. In 2017-2018, the most recent years for which figures are available, the respective profit margins were 0.91%, 0%, 0%, and -0.73%.
- (56) It follows that the granting of the licences in question cannot be said to have improved the financial situation of the undertakings/licensees.
- (57) In the absence of the contested measure conferring an advantage on its recipients, the Commission concludes that it does not constitute State aid within the meaning of Article 107(1) TFEU.

³⁶ The Commission considers that the profit margin, a widely used financial indicator and calculated here as the net profit as a percentage of revenue, is appropriate to determine the return of the exploitation of these licences.

6. CONCLUSION

In light of the above, the Commission concludes that the contested measure does not constitute State aid within the meaning of Article 107 (1) TFEU.

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>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Executive Vice-President