

07 April 2015

**Our Ref:** CL/Tote/BM/GOBA/Fees  
**Enq:** [ceo@ecgbb.co.za](mailto:ceo@ecgbb.co.za)

**NOTIFICATION TO PHUMELELA GAMING & LEISURE LIMITED, EASTERN CAPE LICENSED BOOKMAKERS & THE GAUTENG OFF-COURSE BOOKMAKERS ASSOCIATION (“GOBA”)**

**RE: THE APPLICATION FOR THE APPROVAL OF THE SIGNAL FEES & THE INVESTIGATION REQUESTED BY GOBA**

The above matter bear reference:

**INTRODUCTION & BACKGROUND INFORMATION**

***Proposed Signal Fees - Brief Background***

1. On or about 6 September 2013, Phumelela Gaming and Leisure Limited (“Phumelela”) made an application to the Board to obtain approval for the television signal fees, in respect of horseracing events from the Arlington and Fairview racetracks, which Phumelela intends to levy on Eastern Cape based bookmakers (“the bookmakers”).
2. In the intervening period, Phumelela issued the bookmakers with the terms and conditions of the a Tellytrack agreement (“the New Agreement”) and these have been wholly rejected by most, if not all, the bookmakers.
3. In respect of those bookmakers who did not wish to sign the New Agreement, Phumelela has offered to make available “raw feed” of the visual broadcasts or television signals of the races staged by it for the purpose of display at those bookmakers’ outlets.

Board Members: Adv N Mayosi (Chairperson); O Mtati (Deputy Chairperson); P White; Z Nomafu; JL August; V Tshangana; M Venä; P Vöges; RM Zwane (Chief Executive Officer)

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4. Notably, Phumelela is required in terms of its Conditions of Licence to “clear the proposed cost of making the signal available to bookmakers in the Eastern Cape with the Board.” Phumelela’s conditions of racecourse licence provide as follows in clause 8(6):

*“The Licensee shall ensure that in respect of the licensed premises - the television signal fees charged by the licensee or its subsidiary for a bookmaker to receive a television signal of any horseracing shall be determined by the licensee but shall be subject to prior written approval of the ECGBB.”*

5. Phumelela’s proposal regarding the production costs for the television signals, to be paid by each bookmaker, is as follows:

**Arlington**

- Average production costs per meeting R21 000.00
- Average production costs R30 000.00

**Fairview**

- Average production cost per meeting R20 000.00
- Average production costs R29 000.00

**NB:** The above average production costs are inclusive of transmission costs to the Tellytrack studio in Rivonia. Phumelela also proposed that the above costs be subject to an annual inflationary increase.

6. Phumelela also proposed that the above costs be shared between betting operators licensed in South Africa as follows:

6.1 The proportionate number of licensed bookmaker retail outlets in the Eastern Cape, opting for the above, as a percentage of the total number of licensed betting retail outlets (bookmakers and TAB) nationally.

7. The Board has therefore considered and determined the above proposal regarding signal fees by Phumelela in the terms as contained herein.

***The Tellytrack service and the investigation requested by GOBA***

8. Tellytrack is a channel designated by Multichoice (Pty) Ltd ("Multichoice") to broadcast local and international horseracing events and other sporting events - hereinafter referred to as the "Product" - in respect of which bets are placed by punters. The Tellytrack channel is a product of a partnership between Phumelela, Gold Circle (Pty) Ltd and Kenilworth Racing (Pty) Ltd. Multichoice broadcasts the Tellytrack channel for and on behalf of the Tellytrack partnership, as aforesaid. The provision of televised feed in respect of horseracing events in South Africa, including those from the Eastern Cape (i.e. Fairview), to bookmakers is done through the Tellytrack channel, subject to a written agreement between the latter and the bookmakers ("the Old Agreement").

9. Prior to the lapse of the written agreement, Phumelela and its Tellytrack partners proposed to bookmakers that should they wish to continue receiving the Product they should sign the New Agreement in terms of which, the Product is to be offered to the bookmakers in consideration for a fee equal to 3% of the gross turnover generated by each bookmaking outlet - hereinafter referred to as the "Turnover Fee."

10. It appears that most, if not all, of the bookmakers are displeased with the New Agreement and have been reluctant to sign it, as aforesaid. There seems to be a general consensus amongst bookmakers that the Turnover Fee is excessive. The Tellytrack partners have threatened to instruct Multichoice to discontinue providing the Product to those bookmakers who have not signed the New Agreement. Some members of GOBA were informed by Tellytrack that it will take steps to have the televised broadcasting of South African horseracing events to betting outlets of those GOBA members who had not signed the New Agreement terminated.

11. Attorney for GOBA, Mr John Cameron (“Cameron”) then sent a letter to the Board, dated 28 January 2014 asking the Board to *“urgently investigate and for the purpose of taking steps aimed at ordering Phumelela to ensure that the televised broadcasting of horserace events from the Arlington and Fairview racetracks continue to be received by the members of GOBA.”* Cameron also drew the attention of the Board to section 78(1) of the ECGBB Act.

12. Section 78(1) of the ECGBB Act provides as follows -

*“Enquiries by board – (1) The board may from time to time conduct an enquiry into any matter falling within the scope of its functions.”*

13. Whilst it would seem that, at that time, Multichoice did not suspend the broadcast of Tellytrack to members of GOBA (including those who had not signed the New Agreement), perhaps “fearing the worst”, members of GOBA launched an urgent court application at the South Gauteng High Court (Almenta (Pty) Ltd and 39 Others (“the applicants”), case number: 03504//2014) before Keith Matthee AJ on 18 February 2014 (“the Application”).

14. The applicants were the bookmakers with licences mainly in Gauteng and Eastern Cape provinces. The respondents to the Application were wide ranging, but, in essence, they all have an interest in the horseracing, bookmaking and/ or the betting industry. Amongst the respondents were the Eastern Cape Gambling and Betting Board (“the Board”) and the Gauteng Gambling Board (“GGB”) as well as totalisators: Phumelela Gaming and Leisure (Pty) Ltd, Gold Circle (Pty) Ltd and Kenilworth Racing (Pty) Ltd - the Tellytrack partners.

15. There was no relief directly sought against the Board. The Board was merely cited because it has a material interest in the issues which constituted the bone of contention in the Application and which the court was required to determine. Accordingly, the Board did not “enter the fray” by opposing the application.

16. In his judgment, dated 16 May 2014, Matthee AJ, found that the matter lacked urgency in that it would be premature for the court to intervene in the matter prior to the complaints made by,

GOBA, *inter alia*, being finalized by the gambling boards which were cited - the GGB and the ECGBB, respectively.

17. The Learned Judge was also of the view that having regard to the detailed nature of the said complaints, without testing the evidence of the parties and calling for further evidence where required, the court would not be in a position to grant the relief sought by the applicants. The Judge further opined as follows:

*"... hopefully the sixth and seventh respondents will soon comply with their statutory duty and in the process shed some light on the outstanding issues."*

**NB:** In this respect, the sixth and seventh respondents are the GGB and the ECGBB.

***The investigation by the Board into the "proposed signal fees" and the inquiry requested by GOBA***

18. The Board convened a hearing at Port Elizabeth on 12 September 2014 deal with the issues referred to above. The hearing was attended by representatives from Phumelela, GOBA and Marshalls World of Sport (i.e. the parties)

19. Furthermore, after the hearing, the Board invited the parties to make further written submission. Both GOBA and Phumelela made further written submissions.

**THE DECISION OF THE BOARD**

20. The Board has now considered all the submissions made by the parties and resolved that -

20.1 it is empowered in terms of Phumelela's Racecourse Licence Conditions, read with the Act to regulate or approve those signal fees which pertain to horseracing events taking place in the Eastern Cape televised to bookmakers which are licensed by the Board (i.e. the Board's jurisdiction);

- 20.2 the signal fees proposed by Phumelela are reasonable and thus approved;
- 20.3 Tellytrack is not a subsidiary of Phumelela and that its activities do not fall within the ambit of clause 8(6) of the Phumelela's racecourse licence;
- 20.4 to the extent that Tellytrack is desirous to continue to render a service to Eastern Cape bookmakers, Tellytrack must therefore apply for a certificate of suitability in terms of and in accordance with section 86(1) of the Act within thirty (30) calendar days of this resolution being communicated to Phumelela and/ or Tellytrack;
- 20.5 the payment by the Board to Phumelela of the 50% portion of the 6% gambling tax in respect of horseracing events and other contingencies is prescribed by Ac

Yours Sincerely



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RM ZWANE  
CHIEF EXECUTIVE OFFICER