ATG's tax proposal on horse betting is limping

Horse betting company ATG's CEO Hasse Lord Skarplöth suggests at DI Debatt that the time has come to abandon the goal of at least 90 percent channelisation, which is so central to Swedish gambling policy. The goal has been decided by the Riksdag and the government and means that at least 90 percent of all gambling in Sweden should take place on the legal, regulated and licensed gambling market. That is, on the gambling market where the state collects gambling tax and where consumer protection is given higher priority than other gambling policy goals.

Skarplöth doesn't care much about this now. Instead, he advocates a shock increase in the gambling tax, even though the impact such an increase would have on channelisation, i.e. the proportion of legally licensed gambling, is obvious. And this in a situation where channelisation is already dramatically low without any tax increase, especially in the product segment online casino. There, the channelisation rate, according to ATG's own statistics, is 65-79 percent. At least every fifth gambling krona or in the worst case every third gambling krona leaks out of the legal licensing system to the place where the law of the jungle prevails; the unregulated gambling market.

ATG wants to address this alarming situation by shockingly increasing the gambling tax and thereby creating additional incentives for the consumer to choose unlicensed gambling, where the gambling tax is zero kronor. All licensed gambling products should be affected by the proposed shocking increase in the gambling tax, ATG proposes, with one exception: betting on horses. That is, the gambling product that – whoops – ATG has its own monopoly on.

In Sweden, horse betting is currently conducted in practice by a single company, ATG. There is admittedly no provision in the Gambling Act that explicitly prohibits other actors from applying for a license for betting on horses. Formally, the market is therefore not closed. But in practice, it is a de facto monopoly.

Everyone knows that it is in monopoly markets that margins are at their best, while they are squeezed in competitive markets. ATG could therefore bear a tax increase on horse betting, especially considering that the channelisation for horse betting is 98-99 percent, but its CEO is in fact proposing the opposite, contrary to all logic.

Although the law does not explicitly prohibit others from applying for a license, ATG has the crucial prerequisites for conducting horse betting, such as access to competition data and the direct connection to the Swedish trotting and galloping tracks where the races are arranged. This means that other betting companies lack a realistic possibility to compete on the same terms. In addition, ATG has had 45 years before the reregulation of the Swedish gambling market in 2019, when ATG was able to build up the popular betting pools in a sheltered nest that are practically impossible to compete against once they have been established.

Against this background, a differentiated gambling tax for horse racing would mean that the state, through the tax system, provides an economic advantage that can in reality only accrue to a single company. Then we leave the area of tax policy and fall within the state aid rules of EU law.

Under EU law, state aid that selectively benefits certain companies is prohibited if it distorts competition. The European Court of Justice has repeatedly emphasized that even tax measures can constitute state aid and that the assessment should be based on the actual effects of the measure. Not its formal neutrality. If a benefit can in practice only be used by a single company, it is selective in the sense of state aid law.

This is where Skarplöth's comparison with the United Kingdom, which recently introduced a differentiated gambling tax, becomes misleading. There is no corresponding structural special position for an individual company in the UK. All licensed gambling companies can offer betting on horses on equal terms and the market is open to competition. That situation does not exist in Sweden.

ATG often refers to the societal benefit of horse racing and the need for long-term financing. That is a legitimate claim. But EU law does not accept that this is achieved through selective tax advantages to a company that already has a structural advantage. If the state wants to support horse racing, it can do so in an open, transparent and competition-neutral way. For example, via the state budget or through support that is decoupled from an individual gambling company's tax burden.

The uncomfortable but necessary conclusion for ATG is therefore clear. You cannot both maintain the current special status for horse racing and at the same time introduce a differentiated gambling tax for horse racing without coming into conflict with the EU's state aid rules. If ATG wants to have a differentiated tax, the market must also be opened up so that more companies can compete on equal terms. This is done by making ATG's gambling pools available to more gambling companies at compensation levels determined by a neutral actor. If ATG instead wants to maintain the current structure, taxation must continue to be the same for all gambling products.

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