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Ms J Fubbs
Chairperson: Portfolio Committee on Trade and Industry
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16 September 2011

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Attention: Mr A. Hermans

Dear Chairperson

RE: RESPONSE TO GAMBLING REVIEW COMMISSION REPORT (“GRC”) ON *INTER ALIA* THE BINGO INDUSTRY

WRITTEN COMMENTS SUBMITTED BY THE BINGO ASSOCIATION OF SOUTH AFRICA, GALAXY BINGO INTERNATIONAL SOUTH AFRICA (PTY) LTD AND ITS SUBSIDIARIES AND ALL COMPANIES TRADING UNDER THE NAME VIVA BINGO AND SUBSIDIARIES OF THOSE COMPANIES

1. INTRODUCTION

We, the Bingo Association of South Africa (“**BASA**”), Galaxy Bingo International South Africa (Pty) Ltd and its subsidiaries (“**Galaxy**”) and all companies trading under the name Viva Bingo and its subsidiaries (“**Viva**”) and accept your invitation to comment on the Report of the Gambling Review Commission (“**GRC**”), which report is titled “Review of the South African Gambling Legislation and its Regulation” (“**the Report**”).

BASA is a voluntary association consisting of all the operating bingo licence holders in South Africa, including Viva and Galaxy, which has been formed to represent the interests of the bingo industry.

Viva and Galaxy are the two biggest bingo licensees in South Africa. In these submissions, Viva, Galaxy and BASA will be collectively referred to as “**the Respondents**”.

In addition to submitting these written representations, the Respondents hereby respectfully request an opportunity to present oral submissions at the public hearings, which we understand will be held in due course.

The Respondents, on 12 August 2010, submitted written representations in respect of the draft GRC Report, which we supplemented on 23 August 2010. Copies of the Respondents’ initial and supplementary written submissions are attached marked “1” and “2” respectively.

2. **THE INVALIDITY OF THE ESTABLISHMENT AND FUNCTIONING OF THE GRC**

Before dealing with the intrinsic merits of the findings contained in the Report, it is important to re-iterate the concerns articulated by the Respondents in their initial submissions in respect of the invalidity of the establishment and functioning of the GRC. In the initial submissions, the Respondents contended that the GRC had not been lawfully constituted, and was not empowered to have conducted its investigation at all. The GRC has failed to address this matter in the Report, and the Respondents have received no response from the GRC in relation thereto. . This defect impacts directly upon the ability of this Honourable Committee to rely upon the Report and to make recommendations arising from the Report and the Respondents reserves their rights accordingly.

3. **THE MANDATE OF THE GRC AND THE EXECUTION THEREOF**

3.1. Without prejudice to what has been set out in paragraph 2 above, regarding the invalidity of the establishment of the GRC in its Report, and with full reservation of their rights to pursue such contentions in the appropriate forum, the Respondents now turn to address the merits of the right and the procedure summarising the consultative process by the GRC.

3.2. In the first instance, the Respondents deny that there was a proper consultative process with them, as the primary role players in the Bingo Industry:

3.2.1. The GRC was constituted in December 2009 by the Honourable Minister with a broad remit to “consider if the current legalised gambling activities can [or]

should be expanded or curtailed considering the number of casinos, limited payout machines and bingo outlets already licensed”¹ and having regard for the socio-economic consequences attached to gambling. The GRC’s detailed terms of reference are set out at page 35 of the Report and it is not necessary to repeat same herein. The GRC’s mandate was ‘**extended**’ “by ‘**discussion**’ with the **Minister of Trade and Industry**” in order to “deal with specific issues, such as [Electronic Bingo Terminals (“**EBTs**”)]”² [our emphasis]. The Respondents deny that such conduct could pass, or constituted fair administrative action.

- 3.2.2. It was envisaged that the Report would inform the policy review process currently being undertaken by this Honourable Committee, as the pre-cursor to possible changes and amendments to the legislative scheme regulating gambling in South Africa.
- 3.2.3. The Report was intended as the first step in a legislative process which may culminate in substantial changes in respect of the regulation of gambling, in the country.
- 3.2.4. As such, the GRC was enjoined to consult and engage with all role-players in the gaming industry in the process of eliciting evidence and the formulation of its views. Such an obligation is not merely a formal one; there is also a substantive dimension to it. The GRC was required to engage, consider and analyse the concerns of those involved in the gaming industry on a substantive basis, not paying more lip-service to providing a hearing for role players. This right is constitutionally enshrined. As the Constitutional Court held in the matter of *Doctors for Life International v the Speaker of the National Assembly* 2006 (6) SA 416 (CC) at para 234, participants in the legislative process must know “...*that they not only have a chance to speak, but also enjoy the assurance they will be listened to*”.
- 3.2.5. The Respondents secured for themselves the opportunity to make written representations to the GRC in respect of the first draft of this Report during 2010. The Respondents were at that very late stage, afforded the opportunity to speak, but it is apparent from the final Report that the GRC did not even entertain or consider the concerns and positions which the Respondents articulated to it.
- 3.2.6. The GRC chose not to engage with other material role players in the bingo industry – in particular the manufacturers of wholly electronic bingo devices

¹ Report page 34

² Report page 35

(EBTs) and the approved testing houses that certify that the game being played on such devices is bingo – despite the Respondents having pointed out to the GRC that consultation with these role players is vital.

3.2.7. It also did not take into account, or even mention, that the Gauteng government conducted a comprehensive review of the gambling industry and its social effects. It appears that the GRC was either not aware of this independent research being carried out or chose to ignore it by not engaging with the Gauteng government on this. The findings of the Gauteng government are listed in its report and clearly support what is set out herein.

3.2.8. What is apparent from the Report, however, is that the GRC's findings on the bingo industry were informed by the demands of the casino industry and other factions who are opposed to bingo operators making use of wholly electronic bingo equipment. The clear absence of a factual basis for these submissions is supportive of our concern that the GRC has merely adopted these representations as the truth, without independently soliciting this information. We hereby call upon the GRC and the DTI to make available to us the submissions made by those factions who are opposed to the use of EBTs, so that we can investigate and comment on the underlying reasoning for their contentions.

4. EXECUTIVE SUMMARY OF THE RESPONDENTS ISSUES WITH THE FINDINGS CONTAINED IN THE REPORT

4.1. That the Respondents' views and concerns have been dismissed out of hand by the GRC, is evident not only from the tone and tenor of the Report – it is replete with inflammatory and misleading language in relation to bingo – but also from the two main substantive findings and recommendations which the GRC makes in relation to bingo; namely:

4.1.1. The bingo industry requires greater regulation, insofar as bingo halls have apparently been allowed to "*proliferate*";³ and

4.1.2. EBTs as a "*new form*" of gambling should be banned from bingo halls.⁴

4.2. The Respondents take issue with each of these recommendations, both on a factual and a normative basis.

³ Report page 137

⁴ Report page 161

- 4.3. In the submissions which follow, the Respondents will show how the findings of the GRC:
- 4.3.1. have been improperly influenced by anti-bingo factions within the gambling industry in South Africa, who are motivated by their desire to stifle perceived competition from bingo operators;
 - 4.3.2. made highly technical factual findings without engaging with key role players and stakeholders in the bingo industry;
 - 4.3.3. expressed “*firm*” perceptions of the Bingo Industry based entirely on conjecture, without any factual foundation for such perceptions at all, and indeed, ignoring the true facts placed before it; and
 - 4.3.4. failed to take into account, analyse, consider *or even make mention of* any of the existing and proposed statutory limitations and regulations placed on bingo at a provincial level asserting the existence of a “*...relatively unregulated Bingo/EBT industry...*”.⁵
5. In this regard, it is notable that in the list of References on which the GRC places reliance,⁶ at pages 185 to 188 of the Report, neither of BASA’s written submissions which were lodged in August 2010 are listed. The only reference to submissions made by BASA is to submissions made in April 2010.
6. In contradistinction, the Report records that two submissions by CASA (annotated 2010a and 2010b) were taken into account by the GRC. In addition, in the section which lists the References (as opposed to submissions) relied upon by the GRC, it appears that *four* documents published by CASA were relied upon by the GRC. Three of these documents are referred to as submissions, albeit that they appear to address different aspects of the Report, whilst the fourth is a study entitled “*the 2004-05 Survey of Casino Entertainment*”.
7. The clear bias which is exhibited against the bingo industry and in favour of the casino industry is thus manifested in the GRC’s treatment of the submissions made by the Respondents. It is apparent that the written submissions made by the Respondents have not been considered by the GRC; indeed, these submissions do not even make it onto the GRC’s list of documents on which it has placed reliance. Furthermore, by using the submissions of CASA as references (as opposed to considering them partisan submissions by an interested party), the GRC has further betrayed its casino bias.
- 7.1. The objective facts which were placed before the GRC reflect that:

⁵ Report page 60

⁶ Report page 185 onwards

- 7.1.1. the bingo industry is one of the smallest sub-sections of the gambling industry in South Africa, and has, since 2001, been the least or one of the least popular forms of gambling in the country⁷ (this is partly due to the restricted roll out of the industry due to competitors efforts over years to frustrate the roll out of bingo nationally);
- 7.1.2. those who partake in bingo fall almost exclusively within the wealthiest strata of South Africa society,⁸ who are at the lowest risk for problem gambling;⁹
- 7.1.3. bingo centres have strict access controls with very few, if any, of the problems normally associated with other gambling institutions, such as youth gambling, gambling addictions or alcohol abuse;
- 7.1.4. the positive socio-economic impact of bingo in the areas where they operate; and
- 7.1.5. that there is existing regulation of bingo in provinces in which bingo licences have been issued or granted (namely Gauteng, North West, Mpumalanga and KwaZulu-Natal), which is comprehensive.
- 7.2. In relation to EBTs, the GRC ignored the fact that:
- 7.2.1. EBTs are not new. These wholly electronic bingo devices have been in operation in Gauteng (the province with the highest value of gambling in South Africa) for 6 years! They are devices which connect multiple bingo players, even across multiple locations, and which have been available overseas since 1985, as recognised by the Wiehahn Report of 1995, which recommended that “...*the game of bingo [be] permitted as part of all casino licences granted or where appropriate, under separate licences*”. Indeed, the legislation promulgated subsequent to this, accepted this recommendation and expressly provided for the game of bingo to be played in both casinos and separate bingo sites, unaffiliated to casinos;
- 7.2.2. EBTs are not slot machines, as asserted by the GRC.¹⁰ In the Respondents’ initial submission (annexed marked “1”), the main differentiating characteristics of EBTs as opposed to slot machines were placed before the GRC. The GRC is also aware of the letters of certification (“**LOC**”) from the approved testing houses, confirming that the game played on EBTs is the game of bingo. The GRC chose to gloss over these technical differences, and rather focused on

⁷ Report Page 75

⁸ Report page 85

⁹ Report page 77

¹⁰ Report page 161

what it perceives to be a lack of causal interaction as well as the “look feel and sound of EBTs”, to reach its “finding” that the game played on EBTs is not bingo.¹¹ It did so despite acknowledging that “...there is no doubt that there are some technical differences between a casino slot machine and an EBT”.¹² Given this acknowledgement, the GRC’s conclusion “that the EBTs are slot machines” is fatally flawed. This “finding” has ramifications and indeed fundamental implications throughout the Report in relation to Bingo. It follows that the Report in relation to Bingo is fatally flawed;

7.2.3. Bingo played in wholly electronic form on EBTs has not in any way contributed to a proliferation of gambling. The Report notes that “*the number of adults who gamble regularly...dropped from 86% in 2005 to 42% in late 2008*”.¹³ This is significant, bearing in mind that EBTs were introduced in South Africa in September 2005, showing that the introduction of what the GRC considers a new form of gambling clearly could not have stimulated a latent demand for gambling;

7.2.4. bingo halls which operate independently of casinos, do not compete with casinos or LPM sites. The empirical evidence contained in the Respondents’ submissions places this fact beyond doubt. This Honourable Committee is referred to pages 10 to 17 of annexure “2”. However, the GRC has made no mention of this evidence, relying on a totally uncorroborated perception that EBTs have resulted in a “*playing field that is not level*”.¹⁴

7.3. It is noteworthy that the GRC does not refer to any evidence that it has procured, which supports its assertions. Indeed, on the evidence available to the Respondents, the GRC members only made limited visits to a couple of bingo halls, in which its members played only partly electronic bingo which is based on technology from the 1950s and 1970s. Their comments were that they enjoyed to play “paper” bingo, but that the electronic bingo “looks too much like slot machines” and they “do not like it and do we really need it?” This will lead to the bingo industry looking and feeling archaic, and rendering unable to respond to changes in technology and demand. In order to remain consistent, the GRC should require the same from other forms of gambling. The GRC seems to forget that bingo is gambling as it is a game of chance. They cannot base their findings on their personal preferences as to what the game must look like, so restricting the bingo industry to archaic forms of the game. On the other hand, however, casinos and other forms of gaming have been permitted unrestricted access to technological advancements and as is articulated below, the casinos of 2011 are operating slot machines and gaming tables that have undergone significant

¹¹ Report page 159

¹² Report page 161

¹³ Report page 74

¹⁴ Report page 161

technological advances. It is plain that the GRC's proposal for the bingo industry is to treat it differentially by unfairly discriminating against that industry's use of technological advancements whilst permitting the casinos to utilise every technological advantage available to it to advance its business. Such a situation could never pass constitutional muster.

- 7.4. Even if it can be shown that wholly electronic bingo terminals do compete with slot machines and LPMs (an assertion which has no factual basis), such a position on the GRC's own version, cannot be a basis for the banning of EBTs, or even for the greater regulation thereof. The GRC concludes that the determination for whether lesser or stricter regulation needs to be adopted in relation to a particular sector of the gaming industry, requires a balance to be struck between maximising the revenue generating potential of gaming against the mitigation of the social evils inherent in the industry. The fact that one sector of the industry claims (completely without substantiation, and contrary to evidence) that it may face some competition from another sector, does not, on the GRC's own reasoning, justify legislative intervention or recommendations of the nature proposed by the GRC.

8. THE FRAMEWORK ADOPTED BY THE GRC

- 8.1. In the Report, the GRC has largely endorsed the framework adopted by the Wiehahn Commission, as set out in its 1995 Report. In terms of this approach, it is envisaged that the key principles and main objectives for the regulation of gambling are:¹⁵
- 8.2. the protection of society from the over-stimulation of latent gambling through the limitation of gambling opportunities;
- 8.3. the protection of players and integrity and fairness of the industry through the strict control and supervision of the industry;
- 8.4. the uniformity and harmonisation of policy and legislation at all levels of government and across provinces through minimum norms and standards and co-operation and co-ordination;
- 8.5. the generation of revenue and taxes for provincial government and for good causes;
- 8.6. the economic empowerment of the historically disadvantaged; and
- 8.7. the promotion of economic growth, development and employment.
- 8.8. In considering these objectives, the Wiehahn Commission focussed, as a central concern, on the protection of members of the public involved in gambling:

¹⁵ Page 28 of the Report; pages 63 onwards of the Wiehahn Report

“...the gambling policy and legislation promulgated at all levels of government [ought to] have as a primary objective the protection of the gambler: his physical and mental wellbeing, his personality and democratic rights under the Constitution of the Country; his freedom to gamble or not to gamble; his money; his right to fair gambling; his positive perception of the industry; and his good faith and integrity.”¹⁶

In evaluating where the regulatory line ought to be drawn, these concerns need to be balanced against one another. Indeed, the Honourable Minister has noted that the *“...tension between these objectives [is] playing out in the context of decisions that have to be made about whether new forms of gambling should be allowed and whether the regulation of existing forms of gambling is sufficient”*.¹⁷ Accordingly, in drawing the line as to where regulation ought to occur, the GRC is enjoined to consider the relative social dangers and ills inherent in the gaming activity against the promotion of economic growth and other ends highlighted by the Wiehahn Commission.

As part of its analysis, the GRC advocates the adoption of a *“risk based approach to regulation which would allow for a better targeting of resources”*.¹⁸ On such an approach, the most significant social evils associated with gambling ought to be targeted more closely than those forms of gambling which pose little to no risk.

This approach is consistent with the requirement that the exercise of public power be rationally connected to the purpose for which such powers are granted – that there be such a rational connection is a fundamental requirement of the rule of law, and a founding principle of South Africa’s constitutional democracy. It has been recognised in a number of judgments of our Constitutional Court that the exercise of all public power by any state functionary cannot be arbitrary, and decisions must be rationally related to the purpose for which the power was given.

¹⁶ Wiehahn Report page 65

¹⁷ Report page 34

¹⁸ Page 128 of the Report

Similar reasoning must apply to the recommendations of the GRC. It is our respectful submission that the findings of the GRC in relation to the game of bingo are not justified by the objective facts placed before it, and on its own terms, accepting the correctness of the framework created by the Wiehahn Commission, such findings are unsustainable. The assessment which the GRC ought to have undertaken in considering whether the bingo industry ought to be more rigorously regulated, requires it to balance the potential social ills of bingo against the benefits which are derived from the operation of the industry in South Africa.

8.9. As summarised above, the GRC made two main findings in relation to bingo:

8.9.1. the GRC found that bingo needs to be regulated more stringently, owing to the “...proliferation of bingo halls and gaming machines currently observed”.¹⁹ One of the main concerns in relation to the “proliferation” of bingo as articulated by the GRC, is that the bingo industry is allegedly a contributor to the erosion of the distinction between public spaces and gaming spaces, where bingo halls are located within shopping malls. The fear, which is not explicitly articulated, but which is hinted at throughout the Report – that without further regulation, a plethora of bingo halls (or “bingo casinos”) will spring up throughout South Africa – is simply untrue;²⁰

Currently only 10 bingo centres are operational in the whole of South Africa despite wholly electronic bingo having been certified and operational for over 6 years. The licensing and operation of these bingo centres are well controlled by the relevant provincial gambling board (Gauteng) and it, and other provinces that have issued licences have limited the number of licences and bingo seats that are available in that province. In the North West province, for example, the request for applications for bingo licences indicated a maximum of 7 bingo licences may only be awarded in the province, with a maximum seating capacity of 300 per bingo hall.

Had the GRC properly applied its mind it would have been more reasonable to have recommended the passing of national regulation relating to the total number of bingo licences to be rolled out in each province, the provincial allocation of licences and the total number of seats / gaming positions per licence. The bingo industry has been discussing this with the NGB for a

¹⁹ Report Page 137

²⁰ Report Page 131

number of years and also made this recommendation to the GRC in its written presentations. However, once again, this rational and logical recommendation and request by the bingo industry in its submissions to the GRC was simply ignored;

8.9.2. The GRC found that EBTs (bingo in its wholly electronic format) ought to be banned from bingo halls on three main bases. The first basis is that EBTs “conform to the definition of gambling machines” and create an unlawful “third category of gambling machines”.²¹ Secondly, the GRC is concerned that as there is “no limit on the number of EBT machines that bingo operators may have”²², this may lead to a proliferation of gambling machines in South Africa. Thirdly, the introduction of EBTs has apparently “resulted in a playing field that is not level”²³, insofar as the bingo industry has been able to obtain a significant number of “gaming machines” without the corporate social investment (“CSI”) required of casinos. Finally, the GRC are opposed to EBTs as they “look, feel and sound” like casino type machines.

8.10. The Report is unfortunately replete with examples of where the reach of the bingo industry is over-exaggerated, with the insinuation that it is hopelessly under-regulated. It is also evident that emotive language has been utilized in addressing matters pertaining to the bingo industry. By way of example:

8.10.1. it is asserted by the GRC that there is no opportunity for members of the public to object to the grant of “licences for EBTs” (page 58). To talk of a “licence for EBTs” is itself nonsensical and shows the lack of knowledge within the GRC as there is no separate licence for EBTs. EBTs are devices or equipment on what the game of bingo is played wholly electronically. A bingo licensee is licensed to expose for play equipment on which or by which the game of bingo can be played, at specified premises. Casino equipment is also not licensed. It is the casino itself that is licensed and the equipment which they use is approved by the relevant gambling boards. The claim that the public cannot object to the grant or amendment of a bingo licence is equally untrue. The public participation process in relation to applications for licenses and the amendment of licenses is fully set forth in both the provincial and national statutes. It is as nonsensical as it is untrue that the Gauteng Gambling Board has agreed upon a “...temporary moratorium on the granting of EBT licences” – there is no such thing as an EBT licence (page 56), nor is there a moratorium on the granting of bingo licences. A bingo licence in Gauteng permits the playing of bingo either manually, partly

²¹ Report Page 161

²² Report Page 161

²³ Report Page 161 and 162

electronically or wholly electronically (currently by using EBTs, a product approved and registered by the PLA).

- 8.10.2. It is also patently incorrect that the “*Bingo/EBT industry*” is “*relatively unregulated*” (page 60). As will be apparent from what follows hereunder, bingo is in fact highly regulated on a provincial level in all the provinces where bingo licences have been granted, namely Gauteng, KwaZulu-Natal, Mpumalanga and North West.
- 8.10.3. There is not a scintilla of evidence to support the contention that the poor performance of the LPM industry in Gauteng is partly attributable to the “*...competition from the bingo casinos*” (page 61). The use of the word “*casino*” to describe a bingo hall is indicative of the fact that the GRC has completely aligned itself with the casino industry’s complaint about the “look, sound and feel” of EBTs. Also, if one proceeds from the basis that the casino industry and the LPM industry do not compete with each other, as the GRC seems to do, it is nonsensical for it to refer to “*bingo casinos*” that are competing with the LPM industry. As a matter of fact the LPM industry concerns in Gauteng are due to the difficulties relating to the licensing of sites and not the bingo industry. The GRCs comments in this regard are in any event completely unsubstantiated and speculation. The empirical analysis which is set out hereunder conclusively shows that EBTs do not detract from the profitability of LPMs or the casinos.
- 8.10.4. It is also completely incorrect to state that the “*recent*” “*introduction*” of EBTs has resulted in a “*...playing field that is not level...*” to casinos and is “*...unfair to the LPM industry*” (page 162). Firstly, EBTs (wholly electronic bingo) have been in operation in South Africa since 2005 and since then **only 1 242 EBTs** were rolled out **in the whole of South Africa**. In stark contrast to this **over the past two years** (i.e. in a third of the time that EBTs have been operational) **1 056 LPMs** have been rolled out, **in Gauteng alone**.

There are more gaming machines in one casino than there are operational wholly electronic bingo terminals in the whole of South Africa!

Emperors Palace on the East Rand in Gauteng, for example, has **1 724 slot machines** over and above its casino table games available for play. This in stark contrast with the Wiehahn Commission, which only envisaged casinos having approximately 354 slot machines. Yet the GRC seems to have no problem with this inconsistency with the findings of the Wiehahn Commission. The bingo industry has as much of a right to be part of the South African gambling industry as the other role players including making use of advancements in technology, as it was part of the initial framework of the South

African gambling sector. The casino and LPM industries were allowed to roll out nationally over the past 14 and 8 years respectively, while the bingo industry has been largely contained to Gauteng as a result of anti-competitive lobbying to ensure that bingo operators are prohibited from making use of technology to offer its product in wholly electronic format. The anti-bingo industry even opportunistically exploited the slightest ambiguities in the wording of definitions to frustrate the regulators and bingo operators from making electronic bingo terminals available to bingo patrons, thereby ensuring that technology in the gambling market is reserved for a few players in the market. Moreover, as set out below, EBTs have had **absolutely no detrimental effect** on the revenue streams of casinos and LPMs.

- 8.11. The overwhelming and dominant impression created by the GRC is that the bingo industry is, by stealth, infiltrating the gaming market in South Africa, and is attempting to establish, in public places throughout the country, mini bingo-casinos in which devices which are, for all intents and purposes, slot machines, are operated. This could not be further from the truth.
- 8.12. The GRC, despite the Respondents appealing to it to consult key stakeholders in the bingo industry regarding devices used in the game of bingo, chose not to consult such stakeholders, including, most notably, the South African Gaming Machine Manufacturers Association (“**SAGMA**”), any manufacturers of wholly electronic bingo devices, nor the SANAS accredited testing agencies, GLI Africa (Pty) Ltd and BMM Compliance Africa (Pty) Ltd. The GRC made a highly technical finding of fact, intended to shape gaming policy in South Africa, without a scintilla of factual or scientific evidence to support or explain its conclusions. It is these factually flawed conclusions which now form the basis for its irrational recommendations.
- 8.13. This fact was pointed out to the GRC in the Respondents’ initial submissions. As will be evident therefrom:
- 8.13.1. despite the fact that GRC members travelled as far afield as the United Kingdom, Italy Australia, Singapore, Hong Kong and Macau to consider “*particular issues the [GRC] believed it needed to understand better*”,²⁴ (and we point out that none of these markets operate EBTs or “Class II” products that are predominant in many of the states in America), none of the accredited testing agencies who certified that the game being played on the wholly electronic bingo devices (EBTs) is bingo, were consulted; and

²⁴ Page 37 of the Report

8.13.2. equally, the GRC did not review the National Standards Authorities (SABS/NRCS) letters of certification in relation to EBTs, and did not conduct any research regarding the process of in terms of which EBTs were approved as terminals on which bingo can be played and have been played for the past 6 years.

8.14. In the Respondents' initial submission, it was cautioned that the GRC could not issue final recommendations regarding the bingo industry without input from these role-players and until all relevant parties had been consulted in relation thereto. It is most unfortunate that it did not do so. The ineluctable inference is that the GRC had already pre-judged EBTs (wholly electronic bingo), based on what it had received as submissions from the casino industry, and then using the look, feel and sound of the device as reasoning, without looking into or consulting the technical experts.

9. THE BINGO INDUSTRY AND ITS REGULATION

9.1. In the Wiehahn Report, it was noted that the Wiehahn Commission had not received “...*any substantial submissions regarding bingo, and [could not] determine whether there is any real demand for bingo clubs in South Africa...nevertheless...the game of bingo [ought to be] permitted as part of all casino licences granted, or where appropriate, under separate licences*”.²⁵

9.2. As foreshadowed in the Wiehahn Report, the bingo industry in South Africa has remained relatively small, and only four provinces have invited applications for bingo licences. Bingo halls are, at present, only operational in Gauteng. Although licences have been issued in KwaZulu-Natal, North-West and Mpumalanga, no licensees have commenced operations in those provinces. Accordingly, the only regulatory models which may be analysed are those adopted in Gauteng and, to an extent KwaZulu-Natal which is ahead of North West and Mpumalanga insofar as the opening of bingo halls in that province are contemplated. For the sake of completeness, we mention that in Mpumalanga and North-West, similarly stringent regulation of bingo is provided for in the provincial statutes and regulations.

9.3. A cursory consideration of the legislative framework relating to bingo in these provinces is sufficient to show that the GRC's characterisation of bingo as being a relatively “unregulated”²⁶ form of gambling is simply untrue.

9.4. The ordinary public participation requirements applicable to applications for licences and licence amendments under the Gauteng Gambling Act, 1995 (“**the Gauteng Act**”) are equally applicable to bingo licences. Accordingly, bingo licence applications may only be

²⁵ Wiehahn Report page 131

²⁶ Page 60

submitted in response to a written request for such applications, and notification of such an application must be published in the Provincial Gazette and a newspaper circulating in the area for which the licence is sought. Thereafter, the public may raise objections to the granting of such licences, and may make representations at a public hearing before the Gauteng Gambling Board. This procedure applies equally to licence amendment applications. There have been 2 applications in the past 15 months to transfer a bingo site and to transfer bingo seats (gaming positions). In both instances the applicant was required to publish notices in the relevant Government Gazettes, local newspapers and for the detailed applications to lie open for public inspection at the relevant Gambling Board. Public hearings were also held dealing with these applications and oral representations. The only objections received to these applications were, unsurprisingly, from one particular casino operation which made its anti-competitive stance clear in its objections.

- 9.5. Contrary to the view expressed in the Report, bingo licences are treated with the same strictures and as vigorously as other gambling licences. In addition thereto, bingo licences are regulated *inter alia* in the following manner:
 - 9.5.1. rule 13 of the Gauteng Gambling Rules, promulgated by the Gauteng Gambling Board deals specifically with bingo, regulating *inter alia* the equipment which may be utilised at a bingo centre;
 - 9.5.2. in addition, the floor plan in respect of a bingo centre needs to be approved by the Gauteng Gambling Board, and the floor plan needs to set out *inter alia* the seating arrangement for players, as well as the placement of all equipment which is to be operated at the bingo centre.
 - 9.5.3. furthermore, the rule specifically provides that the holder of a bingo licence is required to submit to the Board “...full details of the type and format of Bingo to be conducted in or at the premises for which the licence is sought, including the types of prizes and jackpots and the manner in which it may be won.” The relevant portion of the rule further provides that only the types of bingo authorised by the Board may be conducted at the bingo centre in question; and
 - 9.5.4. that the demonstrable return to players must be no less than sixty five percent.
 - 9.5.5. The extension of credit to bingo patrons is explicitly prohibited in the regulations.
- 9.6. Since 1999, the Gauteng Gambling Board has not invited further applications for bingo licences, and the licences and total number of seats in the province has remained unchanged since that time. There can be no suggestion that bingo has proliferated in this province since 2005, when wholly electronic bingo was introduced or, for that matter, since

1998, when the first bingo centre was opened. In contrast, it should be noted that the casino industry in Gauteng has experienced significant growth since 2005.

- 9.7. In KwaZulu-Natal, although no bingo halls are yet operational, regulations pertaining to bingo in terms of the KwaZulu-Natal Gaming and Betting Act 8 of 2010 (“**the KZN Act**”) are about to be promulgated. At present, the regulations in respect of the old KZN Gambling Act, which also regulated bingo, continue to regulate that industry in KwaZulu-Natal.
- 9.8. As in the Gauteng Act, the KZN Act regulates bingo licences in largely the same manner as ordinary licences, and exacting requirements must be met before a bingo licence will be issued to a prospective bingo licensee. In addition to these ordinary rules, the draft regulations set out, *inter alia*, in detail:
- 9.8.1. the requirements for an application for a bingo licence, which include *inter alia* details of the physical address of the premises, a floor plan of the bingo hall in question, setting out the areas in which bingo is to be played, written confirmation from the local authority that all zoning and municipal standards have been complied with, as well as details of the electronic monitoring systems which are to be in place;
- 9.8.2. the minimum standards with which a bingo hall must comply, including the measures which are to be taken to prevent access by persons younger than the age of 18, as well as security arrangements to ensure the safety of patrons and the employees employed at the hall; and
- 9.8.3. the number of wholly electronic terminals which may be installed at any one site, which in the final draft of the KZN regulations which the Respondents had sight of, is 150.
- 9.9. It must be pointed out that the rules and regulations set out above are not exhaustive of the manner in which bingo is regulated in Gauteng and KwaZulu-Natal; the rules and regulations set out hereinabove are only illustrative of some of the controls in respect of bingo in these provinces, and the regulatory framework in these provinces include detailed provisions dealing with *inter alia* the way in which bingo halls are to operate, the manner in which equipment is to be approved, and the manner in which bingo halls are to be financially managed.

10. **The socio-economic impact of bingo**

- 10.1. The Report proceeds from the starting point that considerably fewer people participate in gambling today, dropping from 86% in 2005 to less than half, 42%, in late 2008.²⁷ As is evident from the Report, the bingo industry in South Africa accounts for a relatively small portion of the gaming market.²⁸ Bingo accounts for only 0.8% of gambling revenue, whilst LPMs account for 4.2% of such revenues (more than five times that of bingo) and casinos account for 84.8% of gambling revenue (more than 105 times that of bingo).²⁹ This translates to more or less commensurate levels of gambling taxes, although bingo proportionately contributes taxes which are marginally greater than its portion of revenue.³⁰
- 10.2. It is therefore unsurprising that the Report found that bingo is the *least popular form of gambling in South Africa*, with only **1.2% of South Africans** who gamble *participating in bingo* in 2005, the year of the introduction of EBTs. To put this in context, *casino slots* accounted for **13.9% of gamblers in 2005**.
- 10.3. Furthermore, bingo is amongst the least popular forms of gambling amongst previously disadvantaged racial groups (only 0.2% of African people and 1% of Coloured people) participate in bingo.³¹ The participation in bingo by the white population is so insignificant that the Report reflects that 0.0% of white gamblers participate in bingo, when compared to the total gambling market.³² This correlates with an analysis of gambling participation by annual personal income, with only **0.3%** of people who earn less than R 6,000 *per annum engaging in bingo*. This needs to be contrasted with the **3.3%** of such individuals who *participate in casino gambling*. Furthermore, bingo is the form of gambling which has the least participation from under age gamblers, with only **0.6%** of those who *engage in underage gambling playing bingo*.³³ It should be noted that it is not on the premises of licensed bingo operators.
- 10.4. Statistics from the National Responsible Gambling Programme reveal that between **March 2005 to June 2011** (a period of just over six years), the total number of calls related to problem gambling in respect of bingo numbered **sixteen (16)**, whilst for the identical period, calls relating to problem gambling in respect of casino slot machines numbered **four thousand seven hundred and three (4 703)**. For each annual period measured between 2005 and 2011, the bingo sector has consistently received the least number of problem gambling calls.
- 10.5. Empirically, the above statistics convincingly refute the assertion that the bingo industry has, since the Wiehahn Commission's Report, or the introduction of wholly electronic bingo in

²⁷ Page 74

²⁸ Page 40 to 42 of the Report

²⁹ Page 41

³⁰ Page 42

³¹ Page 76

³² Page 76

³³ Page 88

2005, stimulated any latent demand for gambling in South Africa or has resulted in the creation and exacerbation of problem gambling.

- 10.6. This is in part due to the regulations which have been placed upon bingo licences by provincial licensing authorities, and in part due to the fact that there is simply not as much demand for bingo as other gambling forms. This position has not altered with the introduction of wholly electronic bingo six years ago. Indeed, in the six years that EBTs have been in this country, participation in bingo has not increased uncontrollably, nor, as the GRC would have one believe, resulted in significant growth in the industry. Indeed, on the GRC's own analysis, (and accepting the incorrect assertion that EBTs are in fact "slot" machines), wholly electronic bingo terminals only account for 4% of gaming devices in South Africa. This must be contrasted with gaming devices in casinos, which account for 77% of gaming devices in the country, and LPMs, which account for 19%.³⁴
- 10.7. In addition, there is not a scintilla of evidence in the Report to suggest that the welfare of the most vulnerable strata of South African society is imperilled by bingo.
- 10.8. Accordingly, on the GRC's own empirical analysis, bingo does not pose a significant threat to South African society. From that which is set out hereinabove, it is also apparent that at present, bingo is heavily regulated in the provinces in which bingo licences have been issued.
- 10.9. What then is the GRC's justification for the finding that bingo ought to be more highly regulated? The Respondents believe that the recommendations of the GRC have been unjustifiably influenced by the casino industry, intent on stifling competition from the smallest form of gambling in South Africa. As indicated earlier the Respondents do acknowledge the need for national norms and standards with regards to the total number of bingo licences per province and the total number of bingo seats/positions per licence for national roll out.
- 10.10. The GRC also contends that it is concerned that bingo in its present form undermines the distinction between having gambling in dedicated gambling places as opposed to open access public spaces; the Report refers to distinction as the approach of "Destination Style Gambling" ("**DSG**"). DSG, according to the GRC requires a "*...modification of the spatial supply of gambling venues with the deliberate intention of encouraging pre-determined decisions to gamble, making it less likely that problem gamblers will attend venues on impulse alone*".³⁵ This concept is explored hereunder.

11. DESTINATION STYLE GAMBLING AND THE "PUBLIC SPACE"

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³⁵ Page 130

- 11.1. Notwithstanding the fact that the threat posed by bingo is not borne out at all, the GRC contends that bingo in fact encroaches upon “public spaces” and results in a situation whereby the approach of DSG is undermined.³⁶
- 11.2. The GRC’s analysis is that “...Bingo halls...can be accessed with ease from shopping centers [sic] and contain large numbers of EBTs...[This] dramatically increases the public’s accidental exposure to electronic gambling machines which can lead to a proliferation of convenience gambling”.³⁷
- 11.3. It is incorrect, as a fact, to state that EBTs are electronic gambling machines. This is dealt with in greater detail below. Furthermore, although not legislatively stipulated, it has been the approach of the Gauteng Gambling Board to adopt the measures referred to at page 135 of the Report in an attempt to prevent accidental exposure to gambling, and to preserve DSG. This has been achieved by licensed operators locating bingo premises in sections of shopping malls which are removed from the main sections. Furthermore, in none of the operational sites in Gauteng are the wholly electronic bingo devices visible from the entrance thereof. In addition strict access control exist at all sites ensuring that no under 18’s enter bingo sites. Some sites even have security entrances similar to those being used by banks, while others have dedicated security personal scanning all patrons entering the site. Therefore a member of the public cannot simply walk into the premises and the entrances are set up in such a manner which clearly distinguishes it from public space. The current locations of bingo premises also prevent the exposure of gambling premises to the poor, which is one of the objectives of the regulators. At casinos under 18’s can walk around the gambling floors with full exposure to the slot machines and gambling tables even though they are not allowed onto the gaming floors. Also, there are a number of shopping malls that are closely linked to casinos, or they have developed their own shopping centre areas as part of the same destination. Therefore bingo sites are far better than Casinos in this regard as under 18s are not exposed to the gambling at all as they cannot even enter beyond the reception areas. It is puzzling why the prominent display of lottery terminals in shopping centres and most supermarkets does not appear to be an issue for the GRC, even though it mentions the lottery as one of the most popular forms of gambling – no explanation is provided as to why the focus is on bingo halls being in malls. In this regard, no mention, however, is made of the lottery and the GRC again chooses to focus solely on the bingo industry. While bingo, with restricted access and restricted visibility of its products in a separate location is problematic to the GRC, it takes no issue with the visibility of lottery stalls, which are also

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³⁷ Page 131

found in shopping centres. It should also be mentioned that there are a number of sports betting companies that are operating from shopping malls, or who are in the process of applying to relocate to shopping malls.

- 11.4. Importantly however, the Report fails to recognise that since the advent of legalised gambling in South Africa, bingo halls have been located in shopping malls, which are considered to be “*public spaces*”. In fact the first bingo sites already opened in 1998 in shopping centres. As described above, the sites are appropriately separated from the public space, with separate security entrances, with no gambling activities visible from the outside and with strict access controls preventing any exposure to under 18s. At the time of the introduction of EBTs in 2005, bingo halls were similarly located. **Six years** later, the *potential* threat expressed by the GRC has not, as a fact, materialised.³⁸ Rather, the GRC **itself concludes** that in this period, gambling in South Africa declined in real terms. It cannot possibly be correct for the GRC to state, on the one hand, that there has been a reduction, in real terms, in gambling in South Africa, and then on the other hand, to demand greater regulation of bingo (which currently attracts the least players in this country) because of a risk of proliferation. The recommendation which is made by the GRC that bingo be more regulated does not take into account the objective facts that (a) there is no evidence that bingo halls are proliferating and (b) that bingo is **already highly regulated**. The GRC’s recommendation on this issue is simply not justified on the objective facts before it. In fact with over 6 600 LPMs deployed nationally in the past 8 years and more than 22 000 slot machines in casinos, the bingo industry’s low number of approximately 1 200 wholly electronic bingo devices are a small percentage of the total gaming devices in South Africa. Furthermore, the bingo industry has a right to use new technology as has been allowed to the Casino industry in recent years,
- 11.5. Accordingly, given that:
- 11.5.1. bingo operates in South Africa within a highly regulated environment;
 - 11.5.2. since the introduction of EBTs (wholly electronic bingo) in 2005, a substantial and significant growth in the bingo industry has not eventuated at all;
 - 11.5.3. bingo is in no way connected to problem gambling, and it is empirically shown not to impact upon the poorest members of South African society; and
 - 11.5.4. given that the bingo industry has, at all times since 1998, operated within semi-public recreational areas (even though separated from the public space), and has particularly done so since 2005 without the proliferation feared by the GRC occurring,

the GRC's recommendation that the bingo industry be subject to greater regulation is simply not justified, as is its demand that EBTs, which is merely wholly electronic bingo, be prohibited. To recommend that provincial licensing authorities dedicate greater resources to the regulation of bingo would run *contrary* to the risk targeting approach advocated by the GRC. Bingo is already heavily regulated in the province in which it operates, and to recommend tighter regulation at a provincial level is arbitrary, irrational and wholly unjustifiable, particularly when viewed in light of the negligible risks associated with bingo.

12. ELECTRONIC BINGO TERMINALS

12.1. The GRC sets out the bulk of its analysis in relation to EBTs at pages 158 to 162 of the Report, which deals with "*New forms of gambling*". This is the first error which the GRC makes in relation to electronic bingo devices. Bingo is not a new form of gambling; it has been licensed since 1998 and furthermore, there is nothing new about EBTs. The GRC concedes in the Report that EBTs were introduced into South Africa in September 2005, **six years** ago. For the GRC to argue that EBTs constitute a new form of gambling, which is "*...unlicensed and therefore by definition illegal...*"³⁹ is not only misleading but is characteristic of the GRC's patent lack of impartiality in relation to electronic bingo. Technological advances in the manner in which bingo can be played were foreshadowed from as early as 1995 in the Wiehahn Commission Report, in which bingo terminals connected to one another were envisaged:

"Modern technology allows for linked bingo where two or more clubs combine to play a joint game. The increase in the number of players and revenues which result allow the operators to offer greater prizes."

Although the GRC asserts that the Wiehahn Commission only ever "*referred to [bingo] as paper-based bingo*", we have found no such reference to paper bingo in the Wiehahn Report as the exclusive form of bingo permitted. Moreover, and in any event, there is no justification to exclude the bingo sector of the gaming industry from enjoying the benefits of technological advances in the industry. The casino industry has certainly enjoyed the benefits of technological advances over the years. For example, in South Africa, prior to June 1996, the only video based gaming machines operated in South African casinos were poker machines. The introduction of video slot machines

³⁹ Page 142

featuring bonus rounds, dramatically altered the slot machine landscape, with its then existing mechanical slot machine reels. The result of this technological advance, lead to an increase of GGR per machine from R21 000 per month for a mechanical reel slot machine, to over R100 000 per month for a video slot machine when it was first introduced. Today, more than 60% of casino floors have slot machines which are video and average Gross Gaming Revenue (GGR) on these slot machines are commonly more than R40 000 per slot machine and in the larger casinos as much as R50 000. Those machines operate in a regulatory environment which did not contemplate the existence of such machines when that legislation was promulgated. A further example is the fully automated electronic roulette being played in casinos today. In 1997 when the first legal casinos opened roulette was only available and played in its traditional table format and the electronic advancements which followed was not envisaged at the time. We refer to what is set out in paragraph 4.6 above regarding the unfairly discriminatory proposals of the GRC in prohibiting the bingo industry from utilising technological advances, while permitting the casino industry and other forms of gambling to freely utilise technological advances without any restriction.

12.2. Be that as it may, on its own terms, and on the criteria which the GRC itself adopted in its assessment of “new” forms of gambling, its recommendation that EBTs “...*should not be allowed in the country*”⁴⁰ is completely unjustified and irrational. The GRC’s approach is that each technological change in the delivery of games ought to be carefully considered on its own merits, according to nine separate criteria. These criteria are:⁴¹

- 12.2.1. Demand: is there a demand for the activity, and if so, the extent of the demand, whether it is a new market or whether it would constitute the growth of an existing market, the target market and likely impact of the activity on the most vulnerable groups in society;
- 12.2.2. Proliferation: would the activity in question grow gambling in South Africa, either by deepening existing markets (organic proliferation) or by developing new markets (expansive proliferation);
- 12.2.3. Protection: can the activity be fitted into the existing legal framework or is there a need for new regulation;

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- 12.2.4. Geographical location: in what sort of proximity would the proposed activity be to residential areas and communities, and are community-based objections to the location of such activities likely;
- 12.2.5. Economic viability: is the sector viable, and if so, what would the impact on other sectors of the gambling industry be;
- 12.2.6. Economic impact: what would the economic impact of the activity be, in terms of job creation, investment, broad-based black economic empowerment or any similar upliftment policy of government;
- 12.2.7. Competition: would the activity in question stimulate modernisation and innovation in the gambling industry, and is this an activity which would encourage small business participation and encourage new participants into the industry;
- 12.2.8. Enforcement: is the form of gambling capable of being effectively regulated; and
- 12.2.9. Revenue: does the activity create opportunities for revenue generation.
- 12.3. Notwithstanding the elaborate analytical framework which the GRC adopts in relation to its analysis of “new” gambling activities, it neither considers nor applies any of its own stipulated criteria in assessing and analysing EBTs. Rather, the GRC bases its recommendation that EBTs not be allowed in South Africa on four arguments:
- 12.3.1. EBTs constitute “gambling machines” in terms of the National Gambling Act, and by allowing EBTs, a third category of such gambling machines has been introduced into South Africa;⁴²
- 12.3.2. EBTs in any event “look, sound and feel” like slot machines;⁴³
- 12.3.3. there is no limit on the number of EBT machines which bingo operators can have, and this may lead to the proliferation of EBTs;⁴⁴ and
- 12.3.4. the introduction of EBTs has resulted “...in a playing field that is not level...” in respect of casinos, as casinos have to make considerable CSI investment, whereas EBTs do not and in respect of the LPM industry, as bingo halls are not limited in respect of the number of EBTs which they can operate.⁴⁵

13. THE CLAIM THAT EBTS ARE GAMBLING MACHINES

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⁴³ Page 161

⁴⁴ Page 161

⁴⁵ Page 161 and 162

As pointed out above, in finding that EBTs are nothing more than “slot machines” (a position articulated by the casino industry in representations before regulators, and in court proceedings), the GRC has failed to consult with the manufacturers of EBTs or to consider the testing and approval standards which are applicable in relation thereto – this despite an appeal by the Respondents to do so. The GRC concedes that “...*there are some technical differences between a casino slot machine and an EBT...*”,⁴⁶ but do not qualitatively analyse these differences at any length. The differences between EBTs and gambling machines which the GRC refers to, but does not actually consider are the following:

- 13.1. when playing bingo on an EBT, players play against one another by means of a linked network, whereas players using slot machines play against the machine. Bingo is thus a group activity, as opposed to the playing of slot machines, which only requires an individual player. Bingo cannot be played wholly electronically with only one player;
 - 13.2. in order to participate in a game of bingo, it is necessary for the terminal to connect to a Random Number Generator (“**RNG**”), which is a separate device that does not form part of the machine. The RNG provides each terminal with a selected sequence of numbers and pre-determined bingo cards, which may be chosen by a bingo player (*viz* picking the bingo card does indeed determine the outcome of the game). In a slot machine, the RNG equivalent is located within the machine and determines the outcome independently of other slot machines;
 - 13.3. in slot machines, various combinations of symbols provide a player with a pre-determined prize. In EBTs, as with all forms of bingo, players play against one another, and the prize which may be won is variable;
 - 13.4. the game offered by an EBT is also the game of bingo in its electronic format, i.e. there is a draw of numbers by the random number generator which allocates the numbers to the bingo cards displayed on the individual EBTs and matches the numbers to the respective electronic bingo cards on behalf of the player. It is therefore bingo in electronic format and nothing else.
14. Curiously, despite reaching the conclusions it did, the GRC quoted from an empirical study which found that a number of participants in such study, were able to distinguish EBTs from slot machines. Without engaging with such participants, or with the study, the GRC concludes that these

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participants harboured on “erroneous” belief. This also disposes of the GRC’s contention that EBTS “look, sound and feel” like slot machines; as a fact, punters *do not* see EBTS as being slot machines.

15. What did the GRC do to inform itself of the differences between EBTS and slot machines?
16. The Report reflects that the GRC relied on a visit undertaken by one of its working groups to a bingo hall located in the Reede Mall (the site named the “Mall@Reds”). On this visit, the GRC members “viewed” EBTS located on the premises.⁴⁷ No allegation is made that the GRC members made any attempt to play bingo on these terminals, nor that the GRC sought to assimilate, understand or place itself in the position of a notional gambler who partakes in bingo.
17. There is absolutely no foundational evidence on which the GRC could rely to gainsay the technical differences between the EBTS and slot machines.
18. The other basis advanced by the GRC that EBTS are slot machines is its misplaced reliance on the unreported judgment of the North Gauteng High Court in *Akani Egoli (Pty) Ltd and others v Chairperson of the Gauteng Gambling Board and others* (17891/06).⁴⁸ In this judgment, a single judge sitting in the North Gauteng High Court expressed his view that bingo played on EBTS was not sufficiently interactive to constitute the game of bingo within the definition of the National Gambling Act in the absence of a definition of bingo in the Gauteng Gambling Act. This was based on ambiguities exploited by certain casino groups to frustrate the bingo roll out process. The judge, in granting leave to appeal against this judgment, recognised that another court might reasonably have come to a different decision. Given the promulgation of an amendment to the Gauteng Gambling Act, which expressly allows the playing of bingo in a wholly electronic format, the issue arising for determination on appeal became moot. There was accordingly no need to pursue the appeal. The judgment is in any event not binding on any other provincial court.
19. **THE CLAIM THAT EBTS ARE NOT REGULATED, AND THAT THEIR USE WILL RESULT IN A PROLIFERATION OF GAMBLING**
 - 19.1. As set out above in both Gauteng and KwaZulu-Natal, the number of EBTS which may be operated is limited, in the case of the former, to the number of seats which are authorised by the licence, read in conjunction with the approved floorplan, and in the latter based on the final draft regulations which the Respondents had access to, is 150. The return to player percentage is also determined by regulation.
 - 19.2. It is therefore incorrect that there is “...no limit on the number of EBTS...”⁴⁹ which may be operated in a bingo hall. The issue of proliferation of EBTS and gambling, as it is raised by the GRC, does not arise. The Respondents do however acknowledge that there is no

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national regulation for the number of bingo licences to be rolled out by other provinces and the number of seats of such licences and have indicated to the national regulators that the Respondents will work with the regulators to formulate such regulations. Such a proposal was also presented to the GRC, but it was simply ignored.

- 19.3. Over and above the fact that there is no substance in the assertion that EBTs are not regulated, no proliferation of gambling (and bingo) in particular, has been seen in the period since 2005 when EBTs were introduced into South Africa. In fact, **quite the opposite** has happened. On the GRC's own version, and as is set out above, gambling has declined in real terms, with less than one and a half percent of South African gamblers engaging in bingo.
- 19.4. It is also not true, as the GRC asserts, that EBTs form the bulk of playing positions at bingo halls. Strangely enough, it is rather the casinos where slot machines are more than 70% of their gaming positions, with table gaming positions being less than 30% and the majority of these are fast becoming electronic devices as technology advances. The prevalence of bingo played on a device as opposed to bingo played using paper (which has been played in such form since the 1950s) is hopelessly over-stated by the GRC, with it contending that in the case of some bingo halls, EBTs "*...are the primary or even sole attraction*".⁵⁰ If one analyses the relationship between electronic bingo and paper bingo, as contained in the Report, the following emerges:
- 19.4.1. out of a total of 3,422 bingo positions in Gauteng, 2,180 are played using other forms of bingo but primarily the "paper" ticket format of bingo and 1,242 are played using EBTs – almost **two thirds** of all bingo seats in Gauteng are presently paper or partly electronic bingo as opposed to wholly electronic; and
- 19.4.2. out of a total of ten operating sites in Gauteng, electronic bingo is only the majority of the offering in respect of **four** of these sites, with almost a quarter of all electronic bingo terminals in Gauteng at **one site**. Also analysing the GGR per terminal or device, this site's GGR per terminal is approximately half the GGR per terminal or device of the Gauteng average.
- 19.5. The bingo site visited by the GRC's working committee (and which it uses in support of the assertion that EBTs look, sound and feel like slot machines) was the Viva Bingo site in Mall@Reds. No mention is made of the fact that at the Malls@Red site, at that time, had a total of 440 bingo positions, with 325 being paper bingo, and with only 115 being wholly electronic bingo. Little over a quarter of the seats at that site were thus wholly electronic bingo terminals.

19.6. The reason for “paper” bingo continuing to be so dominant at some locations is that bingo operators recognise that different forms of bingo complement one another within the marketplace, and at some locations it is difficult to successfully market the one without the introduction of the other. Market forces do however dictate the allocation of bingo seats. Bingo operators do not envisage that wholly electronic bingo terminals (or other more technologically advanced forms in future) will completely take over from “paper” bingo. However, as the world becomes more and more paperless and technology driven, it has to be accepted that “paper” bingo will also be affected. In the **six years since the introduction of EBTs (wholly electronic bingo) into South Africa** the proliferation which is feared by the GRC has simply not occurred.

20. THE CLAIM THAT EBTS RESULT IN AN “UNFAIR PLAYING FIELD”

20.1. The third basis on which the GRC asserts that EBTs ought to be banned is that by creating a third class of gaming machine, outside of slot machines and LPMs, the bingo industry is unlawfully competing with the casino and LPM industry. As stated above, an EBT is not a slot machine, nor an LPM; it is bingo played in a wholly electronic format.

20.2. Secondly, the mere threat of competition amongst the gaming industry is not a sufficient reason to justify the banning of a particular form of gambling. Indeed, in the context of gambling, the Constitutional Court held in *Phumelela Gaming and Leisure Ltd v Grunlingh* 2007 (6) SA 350 (CC) at para 36 that:

“The right to freedom of trade, enshrined in section 22 of the Constitution is, in my view, consistent with a competitive regime in matters of trade and the recognition of the protection of competition as being in the public welfare”.

20.3. The mere spectre of competition for the casino and LPM industry, on a principle level, is an insufficient justification for the banning of EBTs. In this regard, we would point out that the Report seems to be contradictory in its own terms:

20.3.1. The GRC noted in its Report in respect of betting exchanges that *“much of the opposition to betting exchanges appears to be derived from concerns by existing operators that their markets will be put under pressure from competition by betting exchanges. The commission is of the view that the fact that betting exchanges would present competition to existing forms of gambling is not a good reason to oppose their introduction.”*⁵¹ However, when dealing with

⁵¹ Report page 173

electronic bingo terminals, the GRC's recommendation to ban electronic bingo terminals is predicated on the possibility that casinos and LPMs may be competed with. Again, this is evidence of unfair and unjustified discrimination, which could never pass constitutional muster.

20.3.2. The GRC further contends that EBTs will allegedly stimulate a latent demand for gambling (i.e. create a fresh demand) but at the same time, it is claimed that EBT's are competing with casinos and LPMs (i.e. the demand for gambling, which is captured by bingo halls operating EBTs, already exists). These propositions are mutually exclusive. The fallacy of the GRC's reasoning is obvious. But, as we have pointed out above, the actual factual matrix which pertains, completely negates any of the contentions of the GRC.

20.4. It is factually incorrect to say that bingo halls compete with casinos and LPM sites. This is easily shown by considering an analysis of the Gross Gaming Revenue (GGR) generated by casino slots vs the GGR generated by EBTs across all bingo halls in Gauteng:

	Casino slots Per month	EBTs Per month	Profitability per casino slot vs EBT
2006	R44,824	R10,339	4.3 times more than EBTs
2007	R43,932	R12,512	3.5 times more than EBTs
2008	R45,090	R11,797	3.8 times more than EBTs
2009	R42,842	R12,944	3.3 times more than EBTs

For the calendar year ending December 2008, the total GGR of all EBTs operational in Gauteng equated to approximately R 131 million, whilst the GGR for casino slot machines came to R 4,429 billion. If the results of each of the relevant casino operations are compared with the bingo halls in their vicinity, the following emerges:

(a) Emperor's Palace

Emperor's Palace ("**Emperors**") is the casino which is closest in proximity to a bingo site in Gauteng, being just under 5.5 kms away from Galaxy Bingo's East Rand Mall ("**GBERM**") site which operates 120 EBTs since September 2005.

Notwithstanding the fact that South Africa experienced a recession in 2009, Emperor's has stated to its stakeholders that "*Growth in our GGR market share [increased] to 25.1%*". Despite the impact of the recession, Emperors also saw a growth in slot handle levels by 2.3%. Indeed, the differential between

the profitability of EBTs at Galaxy's East Rand Mall site as opposed to Emperors' slot machines can be set out as follows:

	Emperors Casino Slots	GB ERM EBT's	Profitability per Slot vs EBTs	Emperors Casino slots Total GGR	GB ERM EBT's Total GGR	EBT's GGR Ratio to Slots in same area
2009	48,028	13,837	3.5	993,601,540	19,925,280	2.0%
2010	49,304	14,122	3.5	1,020,000,000	20,336,000	2.0%

As will be apparent from the foregoing, Emperors' casino slots, which are just 5.5 kms away from Galaxy Bingo East Rand Mall, are approximately 3.5 times more profitable per machine than EBTs, over the entire four year period ending December 2005 to 2009. The GGR per slot for Emperors in 2006 was R 46,799, slightly above the Gauteng average of R 44,824. In 2009, it was substantially above the average Gauteng casino GGR, at R 48,028, as opposed to the Gauteng average of R 42,842, notwithstanding 120 EBTs operating at the GBERM premises.

As illustrated in the above table, GGR generated in total by EBTs in the same vicinity amounted to approximately only 2% of casino slot machines' GGR, while the number of EBTs in operation compared to the casino slots in operation amounted to 7% (120 EBTs compared to 1 724 slot machines).

These statistics conclusively prove the difference in demand for slots machines in a casino, compared to the demand for playing bingo on EBTs in a bingo hall (in close proximity to a casino). Emperors also cannot contend that Galaxy Bingo East Rand Mall directly impacted on their performance or their year on year growth, in comparison to other similar sized casinos. This can be illustrated with the following data:

	Slot Growth per year Generally	EBT Growth per year Generally	Combined GGR of Emperors Slots and GBERM's EBTs	Combined Growth of Slots and EBTs
2006			939,367,200	
2007	12.4%	8.6%	1,054,941,120	12.3%
2008	2.8%	-8.0%	1,082,355,680	2.6%
2009	-6.6 %	8.6%	1,013,526,820	-6.4%

As can be clearly seen from the table, the casino slot growth/decline of Emperors versus the EBT growth/decline at Galaxy Bingo East Rand Mall's site, during the same period, do not correlate. There is clearly no connection between the performance of one and the performance of the other.

Combining the EBT GGR of GBERM's site with the casino slot GGR of Emperors, and then comparing it with casino slot year on year growth alone, empirically shows almost no deviation. This proves that should all of GBERM's patrons have visited Emperors, and not Galaxy Bingo, and had they been provided with the opportunity to play EBTs at Emperors, Emperors' year on year growth rate would have been unaffected:

- It had a 12.4% growth rate in GGR in 2007 compared to a 12.3% combined growth rate in respect of both slots and EBT GGR;
- it had a 2.8% growth rate in GGR compared to a combined growth rate of 2.6% in respect of both casino slots and EBT GGR in 2008; and
- it had a negative 6.6% growth rate in GGR compared to a combined negative growth rate of 6.4% in relation to GGR of both slots and EBTs in 2009.

These numbers are also based on a best case scenario for Emperors as it is highly unlikely that all GBERM's customers would visit Emperors Palace if GBERM's EBTs were not in operation and if Emperors could offer the same facilities. It is therefore indisputable that, with or without GBERM's EBTs, Emperors growth rate over the past 4 years, on a year on year basis, was unaffected by, and completely unrelated to, EBTs.

(b) Gold Reef Casino

Gold Reef Casino's results for the 2009 and 2008 calendar years with 1 600 casino slots were:

	2009	2008
GGR	679,763,000	706,256,000
GGR per slot per month	35,404	36,784

Viva Bingo Alberton is the closest bingo site to Gold Reef City, being 15 kilometers away from the casino. Viva Bingo Alberton commenced trading in October 2007 and since inception its average GGR per terminal is R6,806 per month. The annual GGR generated is below R10m, and therefore only 1.4% of the GGR of Gold Reef Casino (R680 million), even though it's number of EBTs (114) are 7% of the number of slot machines of Gold Reef Casino.

Accordingly, Viva Bingo Alberton has not had any effect on the trading of Gold Reef City and playing bingo on its EBTs has not affected the position at all.

(c) Silverstar Casino

Silverstar Casino's results for the 2009 and 2008 calendar years with 784 casino slots were:

	2009	2008
GGR	409,008,000	390,435,000
GGR per slot machine per month	43,474	41,500

Viva Bingo Westgate is 13 kilometers away from the Silverstar Casino and commenced trading in June 2007. Since inception its average GGR per terminal is R5,035 per month and GGR generated per year (R4.7 million) is only 1.1% of the GGR of Silverstar casino (R409 million), even though its number of EBTs (77) are 10% of that of Silverstar's slot machines (784).

Clearly, therefore Viva Bingo Westgate's operations are not having any effect on the trading of Silverstar Casino and playing bingo on its EBTs at the bingo site is not affecting casino slot machine revenue at the nearby Silverstar casino. The CEO of Silverstar in his 2009 directors report indicated that Silverstar increased its market share in Gauteng from 8.5% to 9.2% and its footfall increased by 8%.

(d) Viva Bingo Kolonnade

The nearest casino to Viva Bingo Kolonnade is 60kms away.

The average monthly GGR per terminal of Kolonnade since 2006 is R21 523 and for the 2009 calendar year, it is R23 233. Montecasino statistics are not readily available per casino slot machine, but as the

largest casino in Gauteng, its GGR per slot machine should be above the casino average of R42 842 which is substantially more than Viva Bingo Kolonnade. Emperors Palace's GGR per terminal of R50 488 in 2009 is also substantially higher. The Kolonnade GGR per EBT is significantly below the Gauteng casino slots average GGR of R42 842 for 2009. If Kolonnade is compared to the best casino rather than the average, the variance would even be more significant.

(e) The Marco Polo

The Marco Polo's GGR per EBT is currently approximately R6 000 per month, after two years of trading. The nearest casino to it, Monte Casino, is 13km away. Monte Casino remains one of the most successful casinos in Gauteng and even though their GGR per slot machine is not publically available, it should be above the casino average of Gauteng which is R42 842. Again, the stark difference between Marco Polo's GGR and Monte Casino, or for that matter Emperors or any other casino in Gauteng, is readily apparent.

(f) The LPM Industry

It is disingenuous of the GRC to state that EBTs allegedly compete with LPMs. LPMs, as is noted in the Report⁵², are merely intended to "*provide additional revenue streams to non-casino venues.*" LPMs are explicitly not intended to be the primary business of the site, while bingo (whether or not played wholly electronically) is intended to be the primary business of bingo licensees. The two forms of gambling operate in vastly different circumstances, and the regulation thereof is therefore premised on fundamentally different policy concerns. It is simply not appropriate to compare the bingo industry with the LPM industry or to even talk about competition between these industries.

The Respondents also point out that it is noteworthy that a bingo hall may operate LPMs, given that the GRC itself notes that only "non-casino venues" may operate LPMs.

In any event, as a fact, it is also not true that EBTs are outperforming LPMs. As we understand the position, and bearing in mind the policy requirement that LPMs must not be the primary income-stream

⁵² Report page 57

of LPM sites, the average GGR per LPM nationally (approximately R12 300)⁵³ is almost the same as that of a EBTs(approximately R12 500).

In some provinces, LPMs are even outperforming EBTs. In the Western Cape, the average GGR of LPMs, despite a R500 limited payout, is R19 528, which is substantially higher than the average of EBT GGR per terminal in Gauteng (R12 500). The deviation of LPMs is also significantly more than the EBT sites, with some of the worst sites producing approximately R1,000 GGR per LPM compared to the best producing almost R50,000 GGR per LPM, which is comparable to a casino slot machine. This is again illustrative of the empirical evidence confirming the position of BASA and its members on the limited impact, if any, which bingo played in electronic form (EBTs) has compared to any other form of gaming in South Africa.

21. THE GRC'S ANALYTICAL FRAMEWORK IN RELATION TO "NEW" DEVELOPMENTS IN GAMBLING

21.1. The GRC set out an elaborate analytical framework which it purported to utilise in order to make decisions regarding existing gambling activities. It is most unfortunate that it did not do so in relation to wholly electronic bingo terminals. It incorrectly found that bingo in its current wholly electronic format, EBTs, constitute a new form of gambling, and then chose three arbitrary reasons for reaching the conclusion that EBTs ought to be banned. As is apparent from the foregoing, these reasons are irrational and arbitrary. Even if there were any factual merit in them (which is denied), they are insufficient to justify banning EBTs. It rather seems that the lobbying by certain casino groups have resulted in an even better result than they were probably hoping for. These specific casino operators only have one goal in mind and that it to secure and monopolise as much of the gambling market as possible for their own gain. It seems that the GRC has forgotten that bingo is in fact a form of gambling as it is a game of chance and therefore their resistance to allow this form of gambling to make use of advancements in technology is irrational.

⁵³ Report page 62

Quite to the contrary, if the criteria set out by the GRC are applied in relation to EBTs, a diametrically different perspective emerges:

1. **Demand:** the demand for bingo is an existing, albeit small market which has not substantially increased or been stimulated with the introduction of EBTs. Those who engage in bingo are generally quite affluent, and there is little to no exposure of bingo to the most vulnerable groups in society. There is no link between bingo, whether in the form of paper bingo or EBTs, and problem gambling;
2. **Proliferation** – EBTs have, since their introduction in 2005, not deepened an existing market, nor have they created and developed a new market. In KwaZulu-Natal, limits have been placed on the number of bingo terminals and positions which may be operated at a particular bingo hall. Gauteng regulates the number of EBTs in the province by reference to a limit on the total number of bingo seats licensed for play in the province, allocated to a specified number of bingo licensees, all of whom were licensed pursuant to an RFA issued in 1998, and which RFA has long since expired. Bingo generally operates in an environment which is more than adequately regulated and as a fact, no proliferation has occurred. When compared to the growth experienced by casinos and the LPM industry in the same time, the attack on the bingo industry by the GRC seems even more illogical;
3. **Geographical location** – bingo halls are located in commercial centres and in sites which have previously been approved by provincial gambling boards. Objections from the community and other competing entities (like casinos) have more than adequately been taken cognisance of. The locations are also mostly in affluent areas, preventing adverse affects on the poor. In contrast the LPM and lottery industries do not provide such comfort to regulators;
4. **Economic viability** – although bingo is significantly the smallest gambling activity in South Africa, it is indeed economically viable. Whilst wholly electronic bingo devices do not form the majority of the offering of bingo in this country, at some sites it is the predominant offering and at other sites they do complement “paper” bingo or other forms of bingo offered by bingo licensees and form an important component of the bingo industry. Without being able to offer the full range of bingo, the bingo industry will be prejudiced. This conclusion is not based on supposition, but on the proven history of the bingo market over the past thirteen years;

5. **Economic impact** – the impact of banning EBTs would undoubtedly mean a decline in the profitability of bingo operators, with concomitant reductions in employment and liquidation in some instances. The ability to offer the complete bingo gaming experience to patrons allows for significant employment opportunities. Each site has an average staff complement of 45 persons. Of this staff complement, approximately 85% come from the ranks of previously disadvantaged individuals, with approximately 70% of staff being women. If bingo is rolled out nationally the industry which currently employs more than 400 staff members will expand to employ approximately 3 000 staff nationally, predominantly from previously disadvantaged individuals. To establish a bingo hall costs a significant amount of money, ranging anywhere from R5million to R30million. Unless bingo licensees are able to offer bingo patrons the full range of bingo games, results show that bingo licensees will suffer a significant loss in turn-over, which will prevent the commercial realisation of the significant capital investments made by its shareholders. In addition bingo operators have concluded leases with landlords ranging from 5 years to 10 years. The operators will no longer be able to honour these lease agreements if EBTs are banned. Gaming Taxes and VAT currently paid in Gauteng alone amounts to approximately R40m per year. In addition PAYE and income tax is also paid to government. On a national basis the amounts of taxes paid to government will be substantial once fully rolled out;
6. **Competition** – as has been shown, there is no evidence to support a conclusion that wholly electronic bingo terminals actually competes with casinos, let alone unfairly compete with the casinos. Given our constitutional environment, competition, if it actually does exist between these two market sectors, is to be encouraged and not stifled. All evidence points to the fact that casinos and bingo halls operate in different market sectors and given the regulatory framework which controls the number of bingo seats and licensees, there is very little scope, if at all, for bingo, in electronic form, to pose a serious competitive risk to casinos, or the LPM industry. The LPM industry is in any event by law supposed to be a secondary business element of the large number of widespread sites, whereas bingo as a gambling form is based on a limited number of primary gambling destinations. However, as will be articulated below, what the GRC is proposing, is in fact anti-competitive. It proposes to deprive one sector of the gaming industry from enjoying the benefits of technological progress which it is able to offer to its patrons, whilst enabling another sector of the

industry, opposed to electronic bingo, to enjoy the technological advances which suit it, namely the casino sector;

7. **Enforcement** – the *status quo* is that EBTs are regulated at a provincial level. A review by the GRC of comparative foreign jurisdictions, which are highlighted by the GRC Report, show conclusively that EBTs in those jurisdictions, have been successfully regulated. Indeed, EBTs have been operated in South Africa for the last six years, under the existing regulatory regimes of at least one province (and soon to be a second province) and there can now be no suggestion that they would not continue to be so regulated; and
8. **Revenue** – the operation of EBTs, as set out above, is important for the economic viability of the bingo industry in South Africa and without such devices, the revenue generating potential of the bingo industry would be significantly and unjustifiably impeded.

From a conspectus of the foregoing, it is the irresistible conclusion that, applying the criteria established by the GRC itself, wholly electronic bingo terminals should be permitted, if it actually were a new form of gambling, which we have illustrated it is not. To prove how utterly irrational the GRC's position is, one need only have regard to its presentation to this Honourable Committee. It is suggested that wholly electronic bingo terminals be removed from bingo halls, but a new third category of slot machines be permitted, and that consideration should be given to other sources of revenue, such as poker. It is beyond comprehension how the GRC proposes to stop what it perceives to be direct competition from bingo halls with casinos, by removing wholly electronic bingo devices from these bingo halls, and replacing them with slot machine (Medium Payout Machine or MPM) – the very same devices used by casinos. These machines will definitely have the look, feel and sound of slot machines which earlier on seems to be a concern to the GRC (if one looks the NRGP figures and number of calls regards slot machines this proposition by the GRC makes no rational sense) – and to permit poker, a game played only in casinos. The GRC, with its recommendations, is thus fomenting the establishment of casinos within bingo halls. From a rational point of view it would much rather continue to offer the game of bingo which is what our licences permit us to offer whether played in “paper” form, partly electronically or by wholly electronic means (EBTs).

CONCLUSION

The contentions set out herein are not the only challenges to the GRC's Report and the Respondents reserve their rights to raise any other challenge against the GRC Report in the appropriate time, and in the appropriate forum, should it be necessary for the Respondents to do so.

Having regard to all of the foregoing, Respondents respectfully submit that the recommendations by the GRC regarding the bingo industry should be rejected in their entirety. The Respondents support a recommendation that national norms and standards to regulate the number of bingo licences per province and the number of bingo seats per province and further that national legislative amendments be effected to remove any ambiguity regarding the permissibility of the use of bingo played by wholly electronic means at national and provincial levels. The Respondents reiterate their request to be provided with an opportunity to make oral submissions in respect of the Report.

Yours faithfully,

Galaxy Bingo International South Africa (Pty) Ltd and all its subsidiaries

per:

Viva Bingo (Pty) Ltd and all its subsidiaries

per:

Bingo Association of South Africa (BASA)

per: