



MEDIA STATEMENT

FOR IMMEDIATE RELEASE

5 October 2026

SABA'S RESPONSE TO BETMATCH: THE QUESTION IS NOT WHETHER THE LICENCE EXISTS, BUT WHETHER IT WAS LAWFULLY ISSUED

The South African Bookmakers' Association (SABA) has considered the media release and position paper issued by Betmatch, operated by ZAR Prive (Pty) Ltd, in response to SABA's position on prediction markets and betting exchanges.

Betmatch's response does not answer the central question: Where in South African law is a provincial gambling board empowered to authorise the operation of a peer-to-peer (P2P) betting exchange under a bookmaker licence?

SABA does not dispute that Betmatch, operated by ZAR Prive (Pty) Ltd, holds a "Bookmaker (Bet Exchange)" licence issued by the North West Gambling Board.

The issue is not whether the licence exists. The issue is whether the North West Gambling Board had the statutory authority to issue a "Bookmaker (Bet Exchange)" licence. The power to issue a licence for any specific activity must be found in legislation.

THE LICENCE IS NOT THE ANSWER

Throughout its response, Betmatch repeatedly relies on the fact that it has been licensed.

That misses the point. The fact that a licence may exist says nothing about whether the regulator had the legal authority to issue it. In South African law, bodies created by the legislature may exercise only those powers granted to them by that legislature. Rules, licence conditions and administrative decisions cannot create new powers that Parliament or a provincial legislature did not confer.

SABA has requested the records, legal opinions, evaluations and statutory basis relied upon by the North West Gambling Board when introducing its betting exchange licensing framework. Those records should identify precisely which legislative provisions authorised the licensing of a P2P betting exchange under a bookmaker licence.

Until that legal basis is identified, the question remains unanswered.

Mission Statement

To render to, for and on behalf of its members any services of mutual aid, whilst maintaining and promoting honorable practices amongst bookmakers and their stakeholders within the racing and wagering industry.

BETTING IS NOT NECESSARILY BOOKMAKING

Betmatch relies heavily on provisions of the National Gambling Act which describe the various forms of betting. SABA does not dispute that betting takes place on a betting exchange. That, however, is not the question. The question is whether the operator of a P2P exchange is conducting the business of a bookmaker, as defined in the law. If it is not, why has it been issued with a bookmaker licence?

There are several types of betting, of which the business of a bookmaker is but one example. A conventional bookmaker accepts betting risk. It lays and places bets for its own account. The law recognises this and specifically states it. A bookmaker licence authorises precisely betting of this nature.

A betting exchange performs a different role. It brings together opposing positions, matches bettors and earns commission, while the betting risk rests with the participants themselves. The prices (odds) are not determined by the bookmaker but rather by the betting public.

Accordingly, the mere fact that betting occurs on a betting exchange does not mean that the exchange operator is legally conducting bookmaking. What the betting exchange is effectively doing, is granting a basis and platform for unlicensed members of the public to unlawfully act as bookmakers. As such each member of the public who transacts on the betting exchange wittingly or unwittingly becomes a party to an unlawful betting activity.

BETMATCH'S OWN DESCRIPTIONS RAISE THE QUESTION

Betmatch argues that every bet on its platform is a legally enforceable contract between the customer and ZAR Prive and that there is no direct contractual relationship between individual bettors.

At the same time, its public marketing tells customers something entirely different. Persons visiting the Betmatch website are told that "On an exchange like Betmatch, users lay bets with each other, effectively acting as the bookmaker."

Its advertising invitation is even more direct:

"BE THE BOOKMAKER."

These descriptions point in two completely different directions. If users are laying bets with each other and acting as bookmakers, then the model has the characteristics of a P2P betting exchange.

If ZAR Prive is genuinely the principal and counterparty to every transaction, bearing the financial risk itself, then the model resembles conventional bookmaking rather than the exchange model being marketed.

Both propositions cannot describe the same underlying reality.

The issue becomes even sharper when Betmatch relies on special licence conditions which it says authorise ZAR Prive to lay unmatched bets, as support for its claim that it is indeed conducting the operations of a bookmaker.

If specific permission, in the form of a special licence condition, is required for ZAR Prive to lay an unmatched bet, the question must be: Who lays and accepts the ordinary matched bets? Who bears the financial risk when customer positions are matched? What role is the operator performing at that point?

These questions go to the substance of the business model, not the labels attached to it.

LICENCE CONDITIONS CANNOT EXPAND LEGISLATION

Betmatch also relies on the North West Gambling Board's powers to make rules and impose licence conditions. Again, that does not answer the question.

There is an important difference between regulating how an authorised activity is conducted and creating authority for an entirely different category of gambling activity.

General regulatory powers cannot create statutory authority that does not already exist. The source of the power must be found in legislation.

THIS IS NOT ABOUT COMPETITION

Betmatch suggests that SABA's concerns are motivated by commercial interests. Besides being incorrect, that allegation is irrelevant .

Whether a regulatory decision is authorised by legislation does not depend upon who challenges it. A lawful licence does not become unlawful because competitors object to it, and an unlawful exercise of statutory power does not become lawful because its critics may have commercial interests.

Although SABA represents licensed bookmakers and will naturally consider the competitive consequences of material changes to the regulated betting market, its concern is not competition. Its concern is the integrity of the regulatory licensing framework and the requirement that regulators act within the limits of their lawful authority.

OFFSHORE ILLEGALITY DOES NOT ANSWER THE QUESTION

SABA and Betmatch agree on at least one important issue: Offshore prediction market operators should not be permitted to target South African consumers without lawful South African authorisation.

SABA has consistently advocated stronger enforcement measures against illegal offshore gambling activities. But the fact that offshore operators should be regulated does not mean that the North West Gambling Board was legally empowered to license a betting exchange under a bookmaker licence.

The latter proposition simply does not follow from the former. The inescapable truth is that the law is what it is and permits what it permits, irrespective of opinions as to what it should be or what it should permit. This is the essence of the principle of legality, which is a cornerstone of our constitutional democracy. Reduced to its essence, Betmatch's position is that its licence provides a regulated domestic alternative to unlawful offshore prediction markets, and therefore should be welcomed, without particular regard to whether that licence has been lawfully issued. Even if its operations were to generate the intended benefits, regulatory desirability is no substitute for statutory authority. The principle of legality requires the licence to be justified by law, not by the perceived benefits of its existence.

The existence of unlawful offshore competitors cannot supply statutory authority where none exists. The question remains exactly the same: What provision of law empowered the North West Gambling Board to issue the licence in the first place? If that question cannot be answered, the offshore comparison is a distraction rather than a justification.

THE WAY FORWARD

The solution is straightforward.

The North West Gambling Board should identify the statutory provisions upon which it relied when introducing its betting exchange licensing regime and disclose the records, evaluations and decisions supporting that conclusion, subject only to lawful limitations on disclosure.

If the legislation clearly confers the authority, that authority should be identified and defended. If it does not, then the necessary legislative and regulatory framework should be established before such activities are authorised.

SABA remains willing to engage constructively with Betmatch, regulators, government and other industry stakeholders.

But the discussion must begin with one simple principle:

THE MERE EXISTENCE OF A LICENCE DOES NOT EQUATE TO LAWFUL AUTHORITY TO ISSUE IT.

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Founded in 1951, the South African Bookmakers' Association is the leading voluntary association for bookmakers and represents the interests of its members in the gambling industry.