

To the operators in the market

Is a competition a lottery?

Introduction

The basic premise in Norwegian Law is that all forms of gambling are prohibited, and may only be offered to the public subject to positive authorisation in law.

The following legal acts allow for and regulate access to the gambling market:

Act of 1 July 1927 relating to betting using a totalisator system (“The Totalisator Act”).

Act of 28 August 1992 no. 103 relating to money games etc. (“The Act concerning Gaming Schemes etc.”).

Act of 24 February 1995 no. 11 relating to lotteries etc. (“The Lottery Act”).

The forms of gambling regulated by the Totalisator Act and the Act concerning Gaming Schemes etc. may be organised and offered exclusively by Norsk Rikstoto and Norsk Tipping, respectively.

The Lottery Act applies to all forms of gambling not covered by the Totalisator Act and Act concerning Gaming Schemes. Under Sections 5 and 6 of the Lottery Act, a lottery “*may only be held for the benefit of a humanitarian or socially beneficial aim*”. Furthermore, “*it is prohibited to hold a lottery without a permit*.” It is “*prohibited to engage in the marketing of or mediating lotteries for which no permit has been granted*”; see Section 11 of the Lottery Act.

The object of the Lottery Act is to ensure that lotteries are conducted in acceptable formats under official supervision, and with a view to preventing negative social consequences of gambling, while ensuring that the proceeds of such lotteries may provide a good source of revenue for socially beneficial and humanitarian aims; cf. Section 1a, Lottery Act.

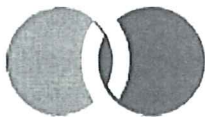
What is a lottery?

Section 1, first paragraph, letter a of the Lottery Act defines a lottery as:

Activity in which participants may for a stake acquire a prize as a result of a draw, guesswork, or other procedure which wholly or in part produces a random outcome.

The three conditions “stake”, “prize” and “wholly or in part [...] random outcome” must all be met for a game to be considered a lottery under the Lottery Act.

The substance of the three conditions is not elaborated on in any legal act or regulations, and is currently evinced only in the legislative works preparatory to enactment of the Lottery Act – and by practice. In cases of doubt, the Ministry of Culture and Church Affairs decides, with binding effect, whether an activity constitutes a lottery, and, that being the case, the specific nature of that lottery; cf. Section 1, second paragraph of the Lottery Act.



Trends in recent years indicate that the media, including newspapers, magazines, TV and radio, are increasingly organising or mediating competitions, entry to which entails the use of Internet and/or mobile phone technology. The competitions range from being games of pure skill to games in which the winner is picked by random draw.

Requirements regarding stakes, chance and prizes

As stated in the foregoing, in order for a game or competition to be regarded as a lottery, it must involve a stake, chance (a random outcome) and a prize.

Stakes

The “stake” in the meaning of the Lottery Act includes the amount of cash participants are required to pay to take part in the game or competition.

For games of the traditional pre-drawn or post-drawn lottery, bingo and slot machine types, the price per lottery ticket, bingo card or turn on the slot machine is to be regarded as a “stake” in the meaning of the Lottery Act.

For other competitions or games, a specific assessment will need to be made as to whether the price of participation is to be regarded as a “stake” under the Lottery Act. The general rule is:

Any payment over and above the going rate for the service is to be regarded as a “stake”

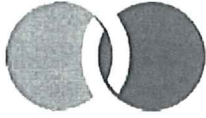
Use of the postal services — first class post (Norwegian “A post”) is not a stake

Certain competitions and games are designed so that participants enter by sending their reply by post as ordinary first class post or registered mail. First class post has a fixed price and payment for this service is not regarded as a “stake” under the Lottery Act. If the postal service costs more than ordinary first class post (e.g. registered mail), the reason for use of this service will determine whether the payment constitutes a “stake”.

Use of fixed line and mobile phone services – any payment over and above standard rates is a stake

Increasingly, competitions are held whereby those wishing to enter the competition are required to call a dedicated telephone number, or send a text message (SMS competitions). In such cases, any payment over and above the standard rate is regarded as a “stake” under the Lottery Act. The determining factor is not whether it is the operating company or the competition or game organiser that receives the proceeds of the stake. What matters is what the service actually costs – not which number is keyed. The implication is that a payment for telephone services, for which the charge is higher than the standard rate because the service entails higher administration costs, is also to be regarded as a “stake” under the Lottery Act.

On that basis, it may be asserted that the conditions laid down in the Lottery Act concerning “stakes” will be met where participation requires the use of “Teletorg” services (premium rate/higher call charge 820 or 829 numbers). Similarly, arrangements are being made for the use of services that allow several callers to place their call simultaneously (815 numbers); so-called intelligent telephone technology.



When it comes to SMS competitions, any payment over and above the standard rate for sending text messages is to be regarded as a “stake” under the Lottery Act. Since the standard price of SMS varies, a limit of NOK 1.00 per SMS is assumed. If the price of entry in a competition exceeds NOK 1.00, that excess is to be regarded as a “stake”.

Some SMS competitions are designed in such a way that, when entrants register to take part, they are required to pay for the text messages the competition requires them to receive, in addition to those that they send. If the unit price of the text messages sent and received exceeds NOK 1.00, the excess is to be regarded as a “stake”. Conversely, if the charge per text message sent and received is NOK 1.00 or less, the payment is not to be regarded as a “stake”.

Entry conditional on membership

Certain gambling propositions are designed so that participation requires membership and fully paid-up membership fees. In such cases, the membership fee is to be regarded as a “stake” under the Lottery Act.

Free lotteries

If payment for competition entry corresponds to the ordinary price for the service used, or if participation is entirely free of charge, it does not constitute a “stake”. This then constitutes a free lottery.

A free lottery is defined as:

An activity in which participants may, without payment of any “stake”, acquire a prize as a result of a draw, guesswork, or other procedure which wholly or in part produces a random outcome.

According to Section 5 of the Norwegian Marketing Control Act, it is “prohibited in the conduct of business to seek to promote the sale or purchase of one or more items of goods, services or other performances by initiating lotteries or other arrangements in which it is decided wholly or in part by chance who is to receive a benefit (prize, reward, premium or other). These provisions shall not apply to offers of rewards or prizes which publishers of periodicals present in their magazines or papers for the solving of puzzles, participation in competitions or similar achievements on the part of the readers.

The value of the prizes and the size of the rewards may not exceed limits stipulated by the Ministry.”
The Marketing Control Act is administrated by the Norwegian Consumer Ombudsman.

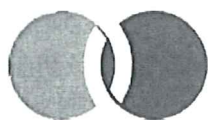
Chance

This is the condition that poses the greatest problems in practice.

To start with the simplest aspect; this condition is **always** met where the winner is picked by a “draw” and/or “guesswork”. This is the type of chance that characterises the most traditional lotteries. However, other methods of picking the winner are also included insofar as these involve elements of “chance”.

The Lottery Act’s wording of the condition of chance also comprises “*other procedure which wholly or in part produces a random outcome*”.

The notes to the provision in Bill to the Odelsting no. 58 (1993-94) p.32 state that this provision represents



an amplification in relation to the Lottery Act of 1939, since it is sufficient for the outcome to be determined by chance **in part** only. This then comprises games in which the potential for winning a prize may to some extent be dependent on the player's skill, speed of reaction or the like.

Page 22 of the same Bill no. 58 (1993-94) states that this amplification of the concept of a lottery is intended to provide for events that have so much in common with lotteries that they should be covered by the Lottery Act.

As a consequence of this, in practice, the assumption is that competitions only fall outside of the concept of "*wholly or in part [...] random outcome*" / "*wholly or in part by chance*" if the winner(s) are picked solely on the basis of their qualifications or "skill". This means that competitions based purely on knowledge or skill fall outside of the lottery concept.

It is sufficient for the condition of a "*wholly or in part [...] random outcome*" / "*wholly or in part by chance*" to be met for chance to be deemed to exist in a part of a competition consisting of several parts, of which one or more of those parts is in the nature of a competition of knowledge or skill. Whether the element of chance occurs before or after the knowledge or skill part of the competition is of no significance.

The Ministry of Culture and Church Affairs, the Gaming Authority and the Lottery Complaints Board has on several occasions reviewed various competition concepts in terms of the Lottery Act, giving special attention to the condition of a "*wholly or in part [...] random outcome*".

It follows from this practice that competitions involving multiple choice questions will always involve an element of chance in that the participants can achieve the right answer by guesswork; and this even if the chances of winning by guesswork may be very small.

Knowledge competitions offering no multiple choice answers may be regarded as pure knowledge competitions and thus fall outside of the lottery concept, provided that the following conditions are met:

- The questions must be worded as genuine knowledge questions for which the correct answer may be found by consulting sources after the event.
- Entrants must respond to the same questions in the same sequence
- Entrants must be given the same amount of time to answer the questions
- Answers must not be presented as multiple-choice (see above)

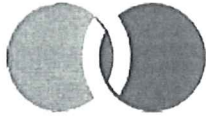
Knowledge competitions may be combined with tests of the entrants' speed of reaction so that the entrant who provides the correct answer to one or more questions in the shortest time wins the competition.

Competitions based on skill:

The format of games of skill varies a great deal. It may for instance be an entertainment-based game requiring fast reactions or precise actions.

Generally it may be said that the competition/game has to provide an equal challenge for all participants. The preconditions for entry in the competition and hence the potential for winning must be the same for all entrants. Where these preconditions are not in place, the outcome of the competition will be determined wholly or in part by factors beyond the control of the individual entrant.

Chance = The outcome of the competition is beyond the control of the individual entrant



Other types of competition (“creativity”):

Recently, the Gaming Authority has registered an increase in the number of competitions inviting participants to compete in submitting the best slogan, drawing, photo, essay and the like – all of which require creative input from the entrants.

In the Gaming Authority’s opinion, such competitions fall outside of the lottery concept provided that:

- the individual achievement of the participant is assessed on the basis of clear criteria defined in advance
- the individual achievements required for winning must require a certain amount of creative input on the part of each entrant.
- the winning entry must be picked by a qualified jury following a fair assessment of all entries submitted.

The condition of chance will be met if the above-mentioned criteria are not present.

The reason for laying down the above-mentioned requirements regarding skill-based competitions is to prevent circumvention of the Lottery Act. Competitions in which the above-mentioned requirements are not met will have a great deal in common with lotteries since they will be perceived as largely based on chance without any special requirements regarding creative input. An example of a competition which is scarcely likely to meet the requirement for minimum creative input would be a competition to send in the best joke.

Prizes

The Lottery Act requires that it must be possible to acquire a “prize” in order for a competition to constitute a lottery. A prize may be cash, objects or other assets with monetary value. In principle, anything of value could be regarded as a prize in the meaning of the Lottery Act.

Prize = in principle anything of monetary value

Practice indicates that objects of negligible value fall outside the concept of a prize. Examples of prizes accepted in practice are simple merchandising and/or symbols of competition entry such as mugs, posters, t-shirts, CD-singles and the like.

Cash and other assets that could be converted into other benefits will always be treated as prizes.

Sanctions in the event of contravention of the Lottery Act

Contravention of the Lottery Act is a criminal offence according to Section 17 of the Lottery Act and punishable by a fine or imprisonment not exceeding 1 year. Serious contraventions are punishable by a fine or imprisonment not exceeding 3 years. In cases of contravention of regulations under or pursuant to the Lottery Act, the Gaming Authority may issue an order to the person responsible to rectify the unlawful condition; see Section 14 a of the Lottery Act. Furthermore, the Gaming Authority may, under the authority of Sections 14 b and c of the Lottery Act, issue administrative writs and impose a coercive fine on the individual who, within an established time limit, fails to comply with any order issued.

