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Horserace Betting Levy – a level playing field?



Under the current UK gambling regime, offshore bookmakers can target the UK market without having to contribute 10% of their profits to the Horserace Betting Levy or pay 15% Gaming Duty to HM Treasury. However, with UK elections around the corner, bookie bashing has become a major crowd pleaser and all political parties are suddenly committed to “cracking down” on offshore bookmakers who do not contribute to the Levy. The Horserace Betting Levy Board (HBLB) made a loss of £4.5 million, following William Hill’s and Ladbrokes’ departure to an offshore jurisdiction. This significant reduction is now threatening the funding of the newly created Sports Betting Intelligence Unit which of course will be paid for by the bookmakers’ Levy contributions.

The Labour Party, if re-elected, has pledged to close the “loophole” that allows offshore bookmakers to avoid paying the Levy. Labour’s Manifesto states that the measure would “generate millions of pounds that would be used to shore up the racing industry while tackling corruption.” How exactly Labour intends to accomplish this task is not mentioned in the Manifesto, however, according to BBC reports, Labour officials plan to simply extend the current Levy system to offshore bookmakers by making the proposed

new gambling licence for offshore operators conditional on a “pledge” to contribute 10% of profits to the Levy. Labour seems to ignore the fact that this may trigger the gambling industry to challenge the whole Levy system on state aid grounds, as was recently announced by the Remote Gambling Association (RGA).

The Conservative Party on the other hand describes the Levy as “outdated”, favouring a more “commercially viable” alternative; whilst the Liberal Democrat MP Don Foster wants to “ensure that betting companies wouldn’t be able to advertise in the UK unless they are making not only the contribution to the Levy but also towards treating gambling addiction, ensuring sports integrity and paying any costs incurred by the country in checking out the regulatory regime in which they operate”.

It is an ill wind that blows no good and there is agreement across the political spectrum that overseas gambling operators should contribute to the current Levy. The fact remains that, whether it is called a Levy, a tax, a rose or by some other name, it will cost dearly, bearing in mind that the recent DCMS Consultation to introduce new licence requirements for overseas gambling operators may also give rise to a 15% Gaming Duty.

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IN BRIEF

Gambling Commission and National Lottery Commission to Merge

As part of a cost cutting exercise, DCMS has announced that the Gambling Commission will merge with the National Lottery Commission. It is hoped that consumer protection as well as efficiency can be improved by bringing all gambling regulation under one roof.

High Court Confirms Law on Gaming Machines

The High Court has ruled, in the hearing of an appeal by the Gambling Commission, that machines offering players the chance to win credits that can be exchanged for a cash prize are gaming machines.

Hearing of US Online Gambling Bill Postponed

The hearing of Representative Barney Frank's online gambling bill, which was due to take place on 16 April 2010, has been postponed. A new hearing date has not yet been set.

Isle of Man

A new gambling bill is currently before the Isle of Man Parliament. The Bill contains provisions that will allow the Gambling Supervisory Commission to draft regulations that provide for players' funds deposited with gambling operators to be held on trust to ensure that player funds are protected.

Jersey—Willkommen, Bienvenue, Welcome

Following increased uncertainties of the future of online gambling on the continent and the proposed new UK licence requirements for overseas gambling operators, it is a pleasure to finally report some positive news and to congratulate Jersey on voting in favour of introducing a new regulatory licensing regime for online gambling.

According to a report submitted to the States of Jersey, online gambling represents a "genuine diversification that the States endorsed when identifying key strategy objectives integral to the Economic Development Department's business plan". The report also dismisses concerns that EU policies and the proposed new licensing regime in the UK may hinder companies from re-locating to Jersey in the first place. Indeed, it is expected that Jersey will join the ranks of Alderney, the Isle of Man and Gibraltar and offer an additional choice for online gambling operators wishing to re-locate to a tax friendly, reputable and regulated jurisdiction.

It is expected that the legislation will go before parliament later this year and following approval by the Privy Council, it is likely that it will be implemented by the end of this year or early in 2011 at the latest.

Online Poker in Russia

Guest Article by Roman Zykov, Senior Associate, LL.M, PhD., Hannes Snellman Attorneys, Moscow

As of 1 July 2009, many land based Russian casinos were supposed to continue their business only in special zones designated by the government, of which there are currently four. As we speak, there is only one casino put into operation in Russia, and one more is under construction in the same zone - Azov City. Before the restrictions were introduced by the Gambling Law (the "Law"), gambling was a lucrative business providing the operators with substantial revenues.

The ban made the land based gaming operators search for alternative methods of conducting their business. Despite the fact that the Law also banned all internet gambling activities, online poker grew immensely after the ban came into force. Some of the international online gambling providers entered the Russian gambling market and successfully continue their operations. This is possible because the Law has a number of loopholes which minimize legal risks for the online casino operators.

The main question is whether poker is a game of chance or a game of skill. Despite the fact that Russian law does not throw any light on this debate, some of the state officials argue that poker is gambling and therefore shall be played

only in the special zones. The rationale is simple - the government strives to control all proceeds of the gambling industry and therefore designates an increasingly popular and profitable game as gambling. The opponents say that if poker is purely based on risk then why do some play it professionally? Further, how is it possible that some players win tournaments continuously one after another? Could this be due to their skill?

It is clear that the fierce debate over poker will continue, although it is the government who will have the final say. What will happen if poker receives the green light? If poker is recognised as a game of skill, then the Law (which is aimed to regulate exclusively games of chance) will not apply. Consequently, the restriction of the Law for online gambling operations will not be valid for poker. As a result legalization of online poker rooms will torpedo all the zoning initiatives of the Law. So, the current official position towards poker is understandable.

In 2009 the government proposed amendments to the Law. Although the amendments were already submitted to the Parliament, their future is uncertain. Until then, online poker continues to be played online in Russia.

DCMS Consultation: Tote to Offer Pool Betting on All Sports

The Government is consulting on proposals to allow the Tote to offer pool betting on all sports. Currently, the Tote is licensed only to accept pool bets on horse racing and dog racing, which it has been doing since the 1920s. The consultation follows a request by the Tote to be authorised to accept pool bets on all sports, in order to remain competitive. Under the proposals, the Tote would be subject to the same rules and standards as other pool betting operators. In order to offer entries to Tote pools on other sports, bookmakers currently offering the 'Tote Direct' system would need to apply for pool betting to be added to their Operating Licence.

Although the Tote currently enjoys a monopoly on offering pool betting on horse racing giving it an

advantage over other pool betting operators, this is planned to come to an end. The Government therefore feels that the recommended proposals will create a level playing field with other pool betting operators.

It is estimated that, if the proposals are adopted, total commission revenues for bookmakers operating Tote Direct would increase by approximately £1.75m and the Tote's own gross profits would increase by around £0.75m.

The Government is also seeking views on extending the licence to enable the Tote to accept bets on non-sporting events and contests. The closing date for consultation responses is 18 June 2010.

No Product Placement for Gambling Products

Although the Department for Culture Media and Sport (DCMS) started a Consultation about permitting gambling product placement on TV after the 9pm watershed, the UK Government has now announced an outright ban, placing gambling in the same category as alcohol and tobacco products.

By way of background, the European Union's Audiovisual Services Directive (AVMS) which replaced the Television Without Frontiers Directive, now allows broadcasters to accept payment for promotion of products in actual programmes, and not just in advertising slots in-between programmes. The AVMS only prohibits the placement of tobacco products and prescription drugs, while leaving it once again to



the EU Member States to decide on gambling.

The UK Government's decision to include gambling on the persona non grata list for product placement further highlights the contradiction of advertising gambling products: gambling products can be advertised around programming, during programming, but not for product placement. Ofcom will still need to consider the proposed product placement dilemma and amend its Code accordingly, before any product placements will be permitted on UK television.

It would have therefore made more sense to include gambling in Ofcom's consultation, instead of giving it the "thumbs down" from the outset.

Scratch Cards and Lottery Scams

The Office of Fair Trading (OFT) issued legal proceedings against five companies and its senior employees for offering various prize-draw scratch cards typically found in direct mailings and newspaper inserts. Although the OFT's list of complaints includes reference to premium-rate telephone numbers before claiming a prize, the OFT also considers the promotions to be misleading and unfair to consumers, stating that the promotions "omit information, or provide ambiguous information, about the chances of winning, costs of claiming and the terms and conditions".

This general statement leaves the door wide open to future interpretation of how detailed terms and conditions to be included on a scratch-card must be, and indeed where they should appear. This move may lead to the re-opening of Pandora's box again and re-visiting the Enterprise Act 2002 for alleged breaches of the Consumer Protection from Unfair Trading Regulations 2008.



European Update



The newly appointed Internal Market Commissioner Michel Barnier has recently called for a consultation on gambling regulation in the EU. However Mr Barnier will be facing an uphill struggle, bearing in mind the EU Parliament's resolution stressing the rights of EU Member States to control individual national gambling markets, instead of being compelled to adhere to a uniform code or the EU principle of "free movement of goods and services" between EU Member States". We wish Mr Barnier the best of luck!



The French Senate made some "minor amendments" to the Gambling Bill, which must now be resubmitted to the Assemblée Nationale before receiving final approval by the Senate. If approved, ARJEL (the new French gambling authority) must take into account licences granted by other EU Member States. This is a direct response to the European Commission's requests to safeguard the freedom of establishment and the freedom to provide services across EU Member States. Also, overseas operators accepting bets from French citizens will no longer be required to close down player accounts, as previously envisaged in the original draft Bill. It is assumed that

this insertion was a direct result of complaints by the online gambling industry, which would give French operators an unfair competitive advantage and therefore perceivably violate EU Competition Law.

The government has been rushing to get the law passed in advance of the football World Cup this June. Approval of an operator will be subject to demonstration of its technical capacity, investigation of its economic and financial position and consideration of its policies and procedures in relation to protecting public order and security, preventing money laundering and financing of terrorism and guarding against problem gambling. How reputable online gambling operators can meet these unfinished and changing requirements before the football World Cup is unclear and may give rise to further complaints under EU Competition Law.



The Italian Gaming Authority has issued a decree authorising the regulation of online poker and casino games. This means that operators holding an Italian licence will be able to offer these games in the near future. With the size of the Italian market for casino and poker games estimated at around €8bn, many operators will no doubt be looking to enter the Italian market as soon as possible. A further decree is expected later this year, which will allow operators to locate their company and equipment outside Italy, either within the EEA or in a jurisdiction which has reached an agreement with the Italian government. This development will be welcome to operators, as it will mean Italian corporate tax savings, although gaming tax will still be payable.



Following Advocate General Paolo Mengozzi's conclusions last month that EU laws are compatible with public monopolies of gambling activities and that offshore licenses from Malta and Gibraltar are not suitable for mutual recognition, Germany can continue ignoring the European Commission's findings that its Interstate Treaty on Gambling is incompatible with the EU's fundamental freedom to provide services across Member States. Some political parties however, most notably the Liberal Democrats, have recognised that regulating the online gambling market instead of prohibiting it altogether is a far better option and are now calling for ending the Treaty.

The German state of Schleswig Holstein made the first move in this direction and announced that it will not renew the Treaty next year. However, this does not necessarily mean that the German gambling market will follow into French or even UK footsteps in the near future, bearing in mind the German tradition of keeping a "watchful" eye over its citizens.

Bans Bans Bans



Estonia has begun blocking access to gambling websites which are not operated pursuant to an Estonian gambling licence. A list of 175 domain names has been circulated by the Estonian Customs and Excise Board

Czech Republic: An amendment to legislation has been proposed, which would mean foreign operators would not be permitted to advertise their services in the country or offer their websites in the Czech language.

Norway: Norway decided to go ahead with payment processing ban and introduced the Payment Act, which will come into force on 1 June 2010. Under the Act, banks and financial institutions processing payments by Norwegian citizens to remote gambling operators established outside Norway will be guilty of "accessory involvement".

Second football decoding case referred to Luxembourg



The Court of Justice of the European Union (CJEU) has been asked once again to protect sports bodies' rights intellectual property rights, this time in relation to companies importing cheap satellite television decoder card to allow games to be shown in pubs.

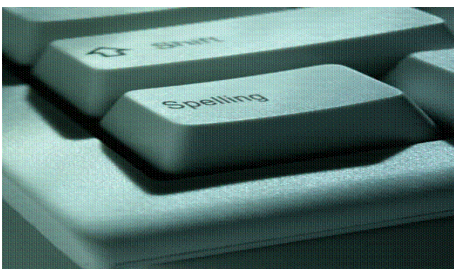
The Union of European Football Association (UEFA) started legal proceedings against Euroview, a company importing decoder cards from other EU Member States to allow pubs access to matches from foreign television fees at a fraction of the cost of paying for rights from UK broadcasters. For example: pubs would only have to pay £800 for foreign bought decoders, while UK sports bodies would charge up to £6,000 for the pleasure of

viewing the same football matches.

It is the second football decoding case referred to the CJEU, in addition to countless proceedings started by sports bodies to protect their IP rights through trade mark, copyright, database or imaginary sports IP rights. This time, UEFA claims copyright infringement, stating that this practice would lead to the EU country providing the cheapest access to a sports event to become the de-facto EU-wide broadcaster. However, according to the Copyright Designs and Patents Act, broadcasters have immunity from copyright infringements that are "temporary and essential to the operation of a broadcasting system". In other words, the current copyright laws give Euroview the right to broadcast sports events, with or without cheap decoders.

The outcome of the first decoding case has not yet been determined by the CJEU and it will be interesting to see whether sports bodies can continue charging high licence fees for broadcasting their events. This brings back memories of the "Turf TV wars". Turf TV was launched by 31 of the UK's 59 racecourses to provide exclusive live coverage of racing, leaving bookmakers with little choice but to buy pictures from the 31 racecourses at higher prices than they had previously paid. Watch this space!

Blogs and Chatrooms: Who is liable for user generated contents on a website?



There has always been some controversy over liability issues from user generated comments in chat rooms, blogs and message boards and many online operators have faced some difficult decisions regarding the degree of control required to avoid potential libel claims. Strangely enough, it turns out that online operators are better off to remain "silent" than to start censoring inappropriate, offensive or libellous user comments. How come?

The E-Commerce Directive exempts

web hosts from liability for the information they store or pass on to users as long as they are not involved in its creation or editing and as long as they remove it quickly once notified that it is in breach of the law. Once an online operator starts commenting or deleting users' online contributions, he becomes fully liable for all users contents including any offensive comments he failed to censor.

To what extent online operators should refrain from involvement, has been further highlighted in a recent case, where the High Court ruled that even correcting the spelling or grammar in users posts will lead to loss of the protection afforded to online operators under the E Commerce Directive. The case in question involved a user's comment, claiming that a local political activist was arrested on suspicion of being a

member of a terrorist organisation. The online operator stated that he "may check the piece for spelling and grammar and make corrections", however, he was not liable for the contents and should be fully protected under the exclusions contained in the E Commerce Directive.

The High Court disagreed and found that merely correcting spelling mistakes is enough to make the online operator liable for users' comments and therefore allowed the libel claim to be brought by the local politician against the online operator. It will be interesting to see what the outcome of the case will be, but for the meantime, online operators should NOT:

- correct spelling and grammar
- take an active role in monitoring chat rooms
- delay in dealing with complaints

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John Hagan to Speak at Paterson's Conference in May

John Hagan will be speaking at the Paterson's Licensing and Gambling Conference on 24 May 2010 in central London. John will be discussing the new competition process for land-based casinos and the potential pitfalls for both applicants and local authorities.

The first two readers to book a ticket will receive a 50% discount, and all others will receive a 20% discount. If you would like to take advantage of this offer, please contact Adam Davidi of Lexis Nexis at adam.davidi@lexisnexis.co.uk.

Marcos Charif to Speak on Mobile Gambling at the Society for Computers & Law

Marcos Charif will be speaking at the Society for Computers and Law on 9 June 2010 in Milton Keynes. Marcos will be discussing legal and regulatory requirements of entering the mobile gambling market, including commercial trends and cooperation agreements. Please contact Harris Hagan if you would like to attend the conference or request a transcript of the main issues discussed at the conference.

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