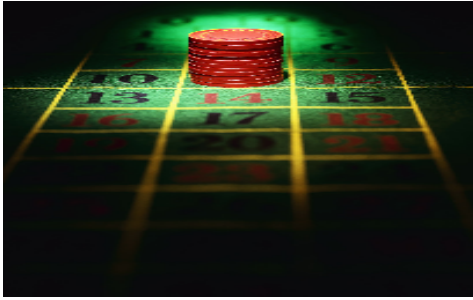


- > **UK Gambling Law**
- > **European Union Law**
- > **Data Protection**
- > **Commercial**
- > **IT**
- > **IP**
- > **Advertising**

Rien Ne Va Plus – European Operators sued for “illegal competition” in French courts



are without a doubt highly protectionist and in breach of European Competition law.

The online operators' arguments are well founded and France will have difficulties prosecuting licensed and legally operating European operators, other than banning them from the French market. With the unattractiveness of the high tax rates proposed by the French legislation, many operators may indeed have lost interest in applying for a French licence in any event.

888, Sportingbet, Unibet and BWIN are being sued by the French casino group Barriere for “illegal competition” for offering casino games to French players.

Barriere's decision to take legal action against licensed online operators is perhaps not a surprise and neither will it be a surprise to see more online operators challenging the current and proposed French legislation. In fact, Barriere's allegations may indeed backfire as they only highlight the inequality and discriminatory tendencies of French gambling regulations. This may only be the tip of the iceberg and Barriere's decision to launch an online poker product with French monopoly Francaise des Jeux while licensed online operators have to stay outside the French market is indeed a liaison dangereuse and only illustrates the real intentions of the proposed French law, which

It is becoming very clear that France has no real intention to liberalise its online gambling market without retaining a disproportionate advantage for its (ex) monopolies and existing French operators. It is only a matter of time before the new French gambling law will be challenged in European Courts. Barriere's action may even be a blessing in disguise as it is a first warning of things to come, and the French Government would be well advised to work constructively with online gambling operators and within the laws of the European Union.

Faites vous jeux...

FURTHER QUESTIONS?
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Newham launches large casino competition

The London Borough of Newham has launched its competition process to award a large casino premises licence. The deadline for stage one applications is 26 May 2010. More than one applicant is likely to pass stage one, during which the local authority must determine only whether each applicant would be granted a premises licence regardless of the fact that only one licence is available. Provided there are no appeals against the stage one decision, stage two, where applicants submit information on how their casino will benefit the area, will commence shortly thereafter. On the present timetable, Newham envisages awarding the licence on 23 December 2010.

In awarding the licence, Newham's objective is to secure the greatest local benefit for the people of Newham, including a substantial financial contribution, significant job creation and business generation. The authority wants to see a world class sustainable development that places the casino as part of a larger leisure and entertainment offer.

FURTHER QUESTIONS? hagan@harrishagan.com

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IN BRIEF

Gambling Appeals Tribunal merger

As part of the Government initiative to centralise tribunal activity, the Gambling Appeal Tribunal, together with the Information Tribunal (Data Protection), the Claims Management Tribunal and the Immigration Services Tribunal have been merged into the General Regulatory Chamber (GRC). This “centralisation” includes a significant change to the appeals procedure, including direct referral of cases from the GRC Upper Tribunal to the Court of Appeal. We would support this decision, given the economies of scale and the fact that the Tribunal has only heard one case to date.

Product placement allowed on UK TV

Product placement is to be allowed in UK television programs for the first time. However, alcohol and gambling products will not be allowed to be shown, even after the watershed.

Franz Wohlfahrt named I M G L Executive of the Year

The CEO of Novomatic, Dr Franz Wohlfahrt, has been chosen as the Executive of the Year by the International Masters of Gaming Law.

After serving as Novomatic’s legal counsel Wohlfahrt was offered the role of CEO in 2004. He has since led the company through a period of rapid growth.

Harris Hagan congratulates Dr Wohlfahrt on this well deserved award.

New Jersey set to become first US state to allow online gambling



New Jersey’s State Senator Raymond Lesniak has introduced new legislation which would allow existing licensed land based casinos in Atlantic City to offer online versions of casino games. Online horserace betting is already permitted in the State.

Under the proposals, only New Jersey residents over the age of 21 would be permitted to take part in the online games. Gaming servers would have to be located in Atlantic City and wagers would be deemed to be placed at that location.

The proposed licence fees and taxes are, unsurprisingly, high. The tax rate would be 20% of gross gaming revenue (wagers less prizes paid out) and licence

fees will amount to around \$200,000 per year.

The proposed legislation also includes the establishment of a separate regulatory governing body for online gambling. Should this legislation go through, New Jersey may be at the forefront of future online gambling regulation in the United States. Although online gambling operators (understandably) prefer to have federal legislation in place instead of leaving individual US states to legislate on online gambling as they see fit, the proposed amendments in New Jersey may just be the starting point and the basis of any future federal legislation.

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Update on French online gambling law

The debate surrounding France’s new online gambling laws continues, with the UK’s Remote Gambling Association stating recently that the draft laws are “disproportionately restrictive and anti-competitive” and that the Government “has no real intention of liberalising the French online gambling market”.

The comments come in the wake of state gambling operator Francaise des Jeux’s reported joint venture with casino operator Barriere to launch an online poker room.

The RGA may make a legal challenge to the law, if the bill is not amended before its adoption.

New restrictions were passed on 19 January when the legislation was voted on by the French National Assembly. One key restriction is that licence applicants will have to close down accounts of French customers until they are granted a licence. Pending determination, state operators Francaise des Jeux and Pari Mutuel Urbain can continue offering their services to these customers. It has been suggested that this provision violates EU competition law because it gives a significant advantage to the state operators.

FURTHER QUESTIONS?
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Raffles - German Anti Competition Legislation is in violation of European Competition Law

The European Court of Justice (ECJ) decided on 14 January 2010 that the German Act Against Unfair Competition is incompatible with EU Competition law.

“It is now possible to promote sales in Germany with the help of raffles or draws”

Background: The supermarket chain “Plus” offered “points” to its customers, depending on the value spent on goods purchased. Once a certain number of points were reached, customers qualified to participate for free in the German state-run lottery. A German consumer protection organisation started legal proceedings against Plus for breaching Section 4 (6) of the German Act Against Unfair Competition, which explicitly prohibits linking participation in raffles to the purchase of goods and services.

The ECJ ruled that the German legislation was in breach of EU Competition law and that member states may not limit the free movement of goods and services through national legislation. Member states are not allowed to introduce new terms to national legislation containing stricter rules regarding the relationship between companies and consumers.

This ECJ finding constitutes a heavy blow to German unfair competition laws, as the prohibition on linking raffles to purchases is one of the main pillars of German anti-competition legislation.

It is now possible to promote sales with the help of raffles or draws; however, the terms and competitions of such raffles will still be closely examined under general provisions of unfair competition law.

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EU Advocate General: German Treaty incompatible

On 26 January EU Advocate General Bot delivered an opinion in a case concerning Winner Wetten, a German sports betting company which provided services for a Malta licensed company. The Mayor of Bergheim, where Winner Wetten is based, ordered the company to stop its activities because it did not hold a locally issued gambling licence.



gambling, this does not, in itself, provide a justification for it to infringe EU law. Member states will have to provide a convincing public interest justification for legislation prohibiting gambling operators in other states if they are to prevent these operators challenging their legislation at the ECJ. It remains to be seen what level of justification for such legislation will be sufficient.

AG Bot confirmed that national laws on gambling must be consistent with EU law, and that the German legislation is incompatible. This derogation should not be permitted, even for a transitional period. The mere fact that the law related to gambling was not sufficient to allow Germany to derogate from EU law.

interpretation of EU law from previous ECJ rulings such as Bwin v Santa Casa. In the Santa Casa case, Portugal justified its derogation from the freedom to provide services in Article 49 on public protection grounds, whereas Germany offered no justification.

The key significance of this ruling is the blow it strikes against the German Treaty. Some German states may be encouraged to break away from the Treaty, and European operators may look seriously at beginning advertising in Germany, on the basis that the legislation banning this activity has been declared illegal.

Although this opinion has been widely welcomed by the industry, it does not represent a change in the

The opinion does, however, strengthen the position of operators because it confirms that just because national legislation relates to

FURTHER QUESTIONS? ellis@harrishagan.com

New model clauses for overseas transfer of personal data

On 5 February 2010, the European Commission introduced new standard clauses for the transfer of personal data. This change was mostly to account for the increase in data transfers outside the EU, and to new business models that are thought to confuse and undermine the Data Protection Regulations by sub-contracting the processing of personal data to third parties not covered by the initial contract between the EU data controller and data processors located outside the EU.

The new model clauses now contain specific provisions for outsourcing personal data to sub-processors and data Processors now require written permission to do so.

According to official statements made by the European Commission, any existing deals do not need to be changed; however, any future sub-contracting will need to take into account the new provisions

FURTHER QUESTIONS? charif@harrishagan.com

Advertising software systems – how precise do you need to be?

The Technology and Construction Court found software supplier EDS guilty of fraudulent misrepresentation. The decision is the most expensive technology dispute so far and may cost Hewlett Packard, who acquired EDS in 2008, hundreds of millions of Pounds.

The background to this case relates to a software agreement between BSKyB and EDS. EDS described its system as “leading and cutting edge technology”, and “overstated the system’s capabilities, resources and time and cost” involved in managing the system.

The Court found EDS’ statements to constitute fraudulent misrepresentation and as such, any contractual cap agreed on liability in the contract between BSKyB and EDS is not binding.

This case is considered to be a fundamental turning point for IT providers who are well advised to review their contracts, whether these contracts are with end consumers or other businesses.

FURTHER QUESTIONS? charif@harrishagan.com

Online contractual terms under investigation



The Office of Fair Trading (OFT) has recently launched an investigation into the fairness of contracts for goods and services. The investigation will focus on online contracts and will examine and assess how clear and understandable contractual terms are to the consumer.

Although the initial intention of the OFT is to protect consumers from deceptive practices, there is a risk that the OFT may have lower expectations of what a “reasonable” consumer is able to understand when it comes to online contractual terms. Will it now be enough to tick

the box to indicate that the consumer has approved the terms and conditions or will specific terms need to be brought to the consumers’ attention in a different way?

It is hoped that the OFT will take a sensible approach to this matter, otherwise we may see unnecessary and additional obligations that only complicate registration procedures and make things even more cumbersome for both online operators and consumers.

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No fair return in sight



In the worst case scenario, we will witness the creation of a new license for offshore operators, including contributions by offshore operators to the Horse Betting Levy, the creation of a Sports Betting Intelligence Unit and the creation of a new IP right for sports bodies requiring bookmakers to pay an additional licence fee for sports events, as currently proposed in France – all in the name of integrity and all paid for by the gambling industry.

FURTHER QUESTIONS?
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Following the consultation on betting and sports integrity conducted by the DCMS and headed by Rick Parry, a former Liverpool Football Club chief executive, a report was published containing various recommendations on addressing the issue of integrity. One of the main proposals was to set up a new cross- sports betting integrity panel within the Gambling Commission (the Sports Betting Intelligence Unit) to investigate possible breaches which could lead to criminal prosecutions. But who will finance this new Unit? Take a guess.

Simultaneously, the Remote Gambling Association (RGA) has also published the outcome of its own betting and sports integrity consultation with sometimes different but always interesting aspects to the same problem, while addressing key issues of existing financial contributions and funding as well.

Let's be clear about this: the DCMS consultation was set up to address the imbalance between UK based bookmakers who contribute inter alia to the Horserace Betting Levy and their offshore competitors, who are not required to do so. Interestingly enough, contributions from overseas operators have suddenly become a

question of "integrity", which is not surprising, bearing in mind that sports bodies often use integrity issues to increase their financial returns.

In a way, the outcome of these consultations is theoretical when it comes to introducing a "level playing field", which apparently will be addressed by the UK's proposal to introduce new licensing provisions for overseas online gambling operators as well. The new licensing regime is aimed at increasing consumer protection and ensuring that overseas operators contribute towards the gambling regulation, problem gambling treatment and the Horserace Betting Levy. The new licensing regime will therefore have significant (financial) advantages for the Horse Race Board and other sports bodies.

According to the RGA report however, "ample funding already exists for integrity issues". The sports industry is well funded and can also rely on additional tax and other benefits throughout Europe. In addition, gambling operators are already providing significant sums to sports bodies, for example by way of sponsorship.

“We may witness the creation of a new licence for offshore operators, contributions to the Horse Betting Levy, as well as the creation of a Sports Betting Intelligence Unit and new IP rights requiring bookmakers to pay an additional licence fee”

Harris Hagan is the only City law firm dedicated exclusively to the provision of legal services to all sectors of the gambling and leisure industry in the UK and internationally.

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We have advised many of the world's largest gambling and leisure operators. We also advise UK companies in all areas of land-based and online gambling. Our clients include governmental organisations, casinos, hotels, bars, restaurants, event venues, bookmakers, online gambling operators, start up ventures and manufacturers of gambling equipment.



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The Legal 500

UK Gambling Update

HMRC clarifies policy on skill with prizes machines

In a joint statement with the Gambling Commission and a subsequent briefing note, HMRC has stated that it believes some machines currently offered as ‘skill with prizes’ are liable for Amusement Machine Licensing Duty. The implications of this go further than duty payments, particularly for casinos: if machines are liable for duty they are gaming machines and must, therefore, fall within a premises’ machine entitlement.

The joint statement issued on 14 December 2009 refers specifically to machines designed to look like recognised games of chance, such as roulette, bingo or poker. A further brief in January, however, also refers to Monopoly and Cluedo as games presented as involving an element of chance.

As a matter of law, any games which either involve an element of chance or are presented as involving an element as chance do fall within the definition of ‘gaming’. In games such as Monopoly and Cluedo, if the game involves the roll of a dice or a random movement around the board then HMRC would say there is an element of chance.

Casino operators have a limit of 20 category B machines. If a machine previously offered in addition to the allowance as a ‘skill with prizes’ machine is, in fact, a gaming machine, the casino operator will need to choose whether to use part of the allowance to continue offering the machine.

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