



## Ana Paula Barros

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PGRI INTRODUCTION: My first impression of Ana Paula Barros was seeing her testify before the highest court in Europe, the European Court of Justice (ECJ) in Luxembourg. Mrs. Barros passionately defended the rights of each EU member state to regulate its own market for the protection of the consumer. In conflict with that are commercial i-gaming interests which would want to apply the principles of free trade, free and open borders, low taxes, and free market competition to gambling. This particular case involved a Maltese i-gaming operator which was suing for the right to operate in Austria. But just as U.S. Supreme Court judgments affect all U.S. states, ECJ judgments affect not only the litigants in a particular case, but all the member states of the EU. Mrs. Barros is from neither Malta nor Austria, but is asked to defend the rights of EU members in cases like this because of the success she had in defending her own country and lottery in one of the most important cases to date: *Bwin vs. Portugal and Santa Casa da Misericórdia de Lisboa*. Bwin contended that EU law required all EU member states open up their markets to operators which are legally licensed to operate in any one EU member state (a principle known as “mutual recognition”). Accordingly, Bwin contended that its license in Gibraltar entitled it to operate in Portugal. That was in conflict with Portuguese legislation, which restricted the right to offer internet gaming to the state lottery operator. In September of 2009, the ECJ ruled that a license to operate in one

EU member state does not automatically confer the right to operate in all member states (i.e. that “mutual recognition” does not apply to the gambling industry). All operators must in fact comply with the regulatory restrictions of each and every member state in which they want to operate. This was a seminal victory for the preservation of member states’ rights to regulate i-gaming.

**Paul Jason, Public Gaming:** *Michel Barnier, the EU Commissioner for Internal Markets, recently released the “Green Paper” which lays the groundwork for clarifying EU laws and principles as regards the regulation of gambling. Mr. Barnier appears to be guiding the EU in a different direction than the previous commissioner, Charles McCreevy.*

**Ana Paula Barros:** Very much so. Charles McCreevy viewed the EU Commission as having authority over the member states with the mission to liberalize or deregulate the gambling industry. He thought that gambling

should be treated like any other industry in which goods and services are produced and consumed in a market-driven capitalist economy. Mr. Barnier’s position differs in two important ways. First he respects member states’ rights to organize themselves to cooperate and defend their own points of view. The efforts of member states should be valued and allowed to contribute to the formation of better regulation and gambling policy. So the Green Paper expressly reaches out to the EU members, inviting input into the process of formulating EU policy on gambling regulation. Second, Mr.

Barnier acknowledges that gambling is an industry that is different from others in many important ways (with potentially negative consequences for families and consumers health) and that the Treaties of Rome and Lisbon that created the EU do not require us to ignore those differences. For historical and economic reasons, gambling is a different kind of business. To build a healthy future for the gaming industry, each member state must understand the meanings of those differences. Geographical proximity makes us interdependent. Individual states must work together while at the

same time respect their differences. That's why member states need to share the commitment to prepare for a future of peace and prosperity; to discuss and cooperate to overcome their differences. We must not forget that no so long time ago, member states would start wars to overcome their differences.

In the three years prior to the appointment of Mr. Barnier, the EU Commission did not participate in the member states' Council meetings. Mr. McCreevy did not regard the opinions of the member states as relevant to the formulation and execution of EU policy. Conversely, Michel Barnier has emphasized that he would not be the commissioner that will liberalize the gambling market. Under his leadership, the EU Commission is working with the Council of member states, trying to understand the views of the members on issues like cooperation and gambling regulation. From his experience, Mr. Barnier knows the enormous accomplishments of the most respected European institutions. He also recognizes that cooperation and dialogue between member states is needed to build a sustainable understanding and progress. The overarching goal of both the Council of member states and the EU Commission is to work together and create gambling policy that is consistent with the needs of the members and the principles of the EU Treaty. That includes both the principle of subsidiarity and the principle of free movement of goods and services. Thus restrictions on competition are some times needed in certain activities to achieve other fundamental goals of the European Community. The ECJ defined them as reasons of common interest. The Commission is always invited to be at the member states' meetings. And it is a significant and welcome change that they are now working with the Council to clarify and implement a thoughtful and coherent approach to regulating the gambling industry. By being sensitive to different ways of doing things to achieve safety and efficiency, the member states set an example of tolerance and democracy. Gambling is a very specific industry based on two of the deepest human aspirations: trust and hope. As citizens, we trust in the people and institutions we know to be trustworthy and we think are qualified to sustain our hope. More than ever, gambling is about relationships, freedom and protection. The leadership shown by Commissioner Barnier will enhance the ability of the member states to cooperate not just with the EU, but also with each other. This is a much more productive approach to working out whatever differences exist between us.

*The leadership of the Council of the EU member states also showed leadership in forging a united front in the form of the Council statement*

*issued last year. Do you think that influenced the views of Michel Barnier?*

**A.P. Barros:** Yes. The Council played a central role on this issue. It is quite a unique Council initiative, with member states coming together to speak in one voice that there needs to be more consideration for the differences between nations and basically asking the European Union Commission to allow the individual EU member states more flexibility to decide their own gambling regulatory frameworks. Different cultures, different public policy objectives, different societal attitudes towards gambling require different approaches to regulation. The member states acted collectively and agreed that when it comes to gambling, we are all different and should be allowed to disagree. Each member state should be permitted to manage gambling as an element of cohesion and solidarity to obtain higher aims. Participation in a wide variety of structures allows us to achieve goals that can't be reached by acting independently. It's a strategic choice to reinforce a stable future and meet the needs of the citizens. I'm sure that Mr. Barnier took note of that statement.

This cooperative approach will ultimately be better for operators too. Markets, commercial operators, and gaming categories are converging. Technological platforms and all infrastructures to distribute and implement gambling can evolve much more effectively for everyone if we take a collaborative approach. The fact that regulatory frameworks differ from market to market does not preclude us from finding efficiencies wherever they exist and make them work to everyone's benefit.

*At issue in the Bwin vs. Portugal and Santa Casa da Misericórdia de Lisboa case was that Bwin was advertising, sponsoring soccer organizers, and operating in Portugal (collecting wages) and arguing that Portuguese law was not compliant with the EC rules and jurisprudence. Bwin decided to defy Portuguese law and sue the member state and Santa Casa. The case went to the ECJ and the Court decided that just because an operator like Bwin is licensed in Gibraltar does not give it the right to operate in Portugal and other EU member states. Your victory surprised Bwin and other remote i-gaming operators.*

**A.P. Barros:** It shouldn't have. The ECJ has ruled consistently over time that member states have the right to implement different gaming activities, and restrict the implementation of games and channels accordingly. The ECJ consistently says that member states have the power and authority to determine how many games they want to have, which types of games to have, and that the games should be implemented by operators whom they trust and who will channelize the benefits according to the

state's own public policy. I quote by heart §60 to 62 of Schindler case ECJ "it is not possible to disregard the moral, religious or cultural aspects of lotteries, like other types of gambling, in all the Member States; the general tendency of the Member States is to restrict, or even prohibit, the practice of gambling and to prevent it from being a source of private profit. Secondly, lotteries involve a high risk of crime or fraud, given the size of the amounts which can be staked and of the winnings which they can hold out to the players, particularly when they are operated on a large scale. Thirdly, they are an incitement to spend which may have damaging individual and social consequences. A final ground which is not without relevance, although it cannot in itself be regarded as an objective justification, is that lotteries may make a significant contribution to the financing of benevolent or public interest activities such as social works, charitable works, sport or culture. Those particular factors justify national authorities having a sufficient degree of latitude to determine what is required to protect the players and, more generally, in the light of the specific social and cultural features of each Member State, to maintain order in society, as regards the manner in which lotteries are operated, the size of the stakes, and the allocation of the profits they yield. In those circumstances, it is for them to assess not only whether it is necessary to restrict the activities of lotteries but also whether they should be prohibited, provided that those restrictions are not discriminatory. (...) the Treaty provisions relating to freedom to provide services do not preclude legislation (...) in view of the concerns of social policy and of the prevention of fraud which justify it."

My point is this. The ECJ simply agreed with us that preservation of Public Order, Social Policy, Public Health, and preventing crime and fraud in a coherent and systematic manner is in full compliance with the Treaty of the Union. Therefore, compliance with Portuguese law is required of all companies that want to operate in Portugal. Just as in the Dickinger/ Ömer vs. Austria case, the operators are claiming that all EU member states should be required to recognize the validity of a license in any one member state, like Gibraltar or Malta. Why does that make any sense? Each member state has its own standards and expectations and the right to require operators to meet those requirements. It is our position that overriding public interest considerations like Public Order, protection of the players and the public, is compromised by having multiple operators. The ECJ agreed with us.

*Both the Santa Casa da Misericórdia de Lisboa vs. Bwin and the Dickinger/ Ömer vs. Austria*

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cases were largely about the principle of mutual recognition of gambling licenses. And the judgments of the ECJ seem to be that, as it relates to gambling regulation, the principle of subsidiarity trumps the principle of mutual recognition.

**A. P. Barros:** It is not that simple, but yes, the ECJ is upholding the rights of each member state to implement and enforce its own regime, and thus its own set of licensing terms and conditions, as long as it does so in ways consistent with EU principles. However, a cooperative approach to many of these issues will serve everyone's interests. The member states should work together, share information about criminal records, cooperate in research, improve minimum rules for consumers protection, conduct investigations into pathological gambling and minimize social costs triggered by gambling problems, and perhaps even build procedural standards that enable them to reduce duplication of mere formal administrative effort. The process of investigating and vetting an application for the existence of previous criminal activity, for instance, should not need to be repeated in every jurisdiction. It will be better for all of us, operators and governments alike, to take a collaborative approach to the licensing of operators. But in the end, it must remain the right of each member state to decide whether a standard or procedure is consistent with its own public policies and regulatory approach. Otherwise, standards will be diminished to the lowest common denominator. Mutual Recognition applied to licensing of gambling operators would result in the imposition of lower and lower standards, with the standards of the most lenient EU member becoming the standards of the entire Union. That's why the fact that Dickinger/Ömer is licensed in Malta does not mean that Austria should be required to give them a license to operate in Austria.

At issue is whether the regulatory constraints are there to preserve Public Order or whether they are there solely for the purpose of channeling funds to the government. Among the interesting points you made in your testimony is that the multiple operator model may be fundamentally contrary to an effective responsible gaming and player protection system. As an example, you point out that a basic player protection and responsible gaming tool is to apply maximum betting amounts and/or enabling the player to do self-regulate. And that a multiple operator model makes that virtually impossible since the player can set up accounts at more than one operator.

*It would also seem to me that the multiple operator model would require expansion of the market. The fundamental concept of capitalism is that competition and free trade drives operators to deliver a better product and better value proposition, which in turn causes demand to increase, the market to expand, and all this driving a positive feedback cycle. But couldn't a case be made that when it comes to gambling, market growth is actually not the goal, and that high taxes are a useful tool to preserve Public Order by making sure the value proposition isn't too compelling? The result being more money for Good Causes and responsible public policy at the same time.*

**A. P. Barros:** Yes, and that works best in a monopoly system that is controlled by the government. Look at the markets that are opening up now. The high-tax model is on a collision course with the pressure for multiple operators to compete. When the UK, France, Spain, Germany and others decide to apply a tax rate that is higher than the commercial operators feel is appropriate, those operators protest that the cost burden will make their value proposition unappealing to the players who will then migrate to illegal or underground operators. But what are the operators really saying? They seem to be saying that if the tax rate is higher than they like, then they will be forced to offer their products in a gray or underground market and evade the taxes.

We should emphasize that "high taxes" do not necessarily mean 50%. Or even 30%. Private operators state that they want to pay taxes. One might assume that private operators are pushing for tax rates similar to other services industries. But that is not the case. What they are really doing is pushing member states to impose on them the Malta or Gibraltar tax rates that are less than 2%. Commercial operators are trying to convince governments to treat gambling like every other industry in all aspects, including low taxes (none ideally) and large margins. Most legislators recognize that is just really wrong-headed and bad public policy.

*But these operators know that the technology exists to block ISP's and therefore prevent illegal operators from accessing the markets, right?*

**A. P. Barros:** Yes, of course they know that. And they also know that if everyone is doing business with the same cost basis, then everyone has an equal ability to compete. As long as everyone complies with the rules, pays the taxes, and access to the illegals that are not paying taxes is blocked, then the op-

erators can be confident that a better product and service will win market share. The problem is that a competitive marketplace that does not expand will not necessarily support the increasing number of operators. That is the fundamental problem with the opening up of the market to multiple licensed operators. A system like that depends, like all capitalist markets, on growth. What if, as is often the case with gambling, the government would prefer to apply high taxes for the purpose of controlling growth as a matter of public policy and Public Order? A static market with slow growth may not be able to absorb the capital investment flowing in from the commercial operators. It's not for me to say that a monopoly system is the only solution. But neither is it the government's obligation to solve this problem for the benefit of the private operators. Governments are entitled to have the model and the tax rates that they deem best for their citizens; and should not be required to adjust their public policy and fiscal objectives to meet the expectations of commercial operators.

You want to realize that this is not just about internet gaming. The Green Paper is about all gaming and gambling. Internet gaming is about 1.5% of the overall lotteries gaming revenue. No one knows the exact percentage, but it is very small. These discussions about online gambling actually target gambling in general. In fact, it is really more about the off-line markets, including lottery and land-based casinos. Internet gambling is crucial to this industry, with its new distribution systems and reshaped games. But the focus is to work towards a regulatory framework that addresses the entire structure of the gambling industry, especially the off-line sector.

Just last week I attended a meeting of operators in Stockholm, and private operators made it clear that gambling on the internet is only the beginning. They call it the little fish used to catch the big fish which is the off-line market.

*You seem to be saying that even though i-gaming is growing at a faster rate than off-line gaming, it will always be a relatively tiny portion of revenue and an even smaller portion of profits.*

**A. P. Barros:** That is the way the operators themselves look at it. They see the internet as the future, but not by itself. The big revenue streams, and the most profitable revenue streams, will always be tied in with the off-line world.

*How do the recent indictments of PokerStars, Full-Tilt, and Absolute Poker in the U.S. affect*

*events and policy in Europe?*

**A. P. Barros:** I was at a meeting four years ago in Europe to discuss ways to stop the growth of international illegal gambling. It was attended by an agent from the FBI who told us even back then that they were working with Interpol to develop and implement legal strategies to identify and prosecute illegal operators regardless of where they base their home office. Illegality must be stopped no matter where it originates from. And just because it may be legal in one location does not make it legal everywhere. I am amused at the logic that you can't prosecute those i-poker companies for operating illegally in the U.S. because they are legally licensed to operate in other countries. It is encouraging to see that the cooperative efforts of the FBI, Interpol and other agents of law enforcement are producing results and bringing these "alleged criminal" operators to justice, or at least stopping them from operating.

*It would appear that they have laid the legal groundwork for making the charges stick and enforce the rule of law.*

**A. P. Barros:** Effective regulation isn't just for the benefit of the players and the general public. It is also for the protection of the commercial operators which are complying with the laws. How can they compete with the illegal operators who do not pay taxes and don't comply with other "heavy" obligations (like contributing for local development)? Prior to the UIGEA, the dominant i-gaming operator in the U.S. was Party Poker, right? Party Poker chose to comply with the law and withdraw from the U.S. market as required by law. PokerStars and Full-Tilt moved into the vacated space, made hundreds of millions of dollars which subsidized their European operations, and that enabled them to take over the European market. Their market dominance was fueled with illegal funds and the law abiding operators in Europe are among the victims of their "criminality". Tolerance for illegal operators is harmful to everyone including, perhaps even especially, the operators who endeavor to comply with the laws. The only way to stop these illegal operators is to make it impossible for them to make money and to prosecute the individuals who violate the law.

*You have personally been at the center of the legal battleground in Europe to create a regulatory framework that protects the public from these illegal operators. It would seem to me that an important component to making it impossible*

*for them to make money would be for each country all around the world to respect each others' laws and assist in the enforcement of each others' laws. How do you think it will affect the licenses that PokerStars and Full-Tilt have with European countries now that these companies and the principals of these companies are under criminal indictment in the U.S.? Why would France, Italy, UK, and all other countries want to license operators who are under criminal indictment?*

**A. P. Barros:** I agree with your reasoning. But gambling law in Europe is based on the principle that each member state is free to determine its own regulatory framework. The only basic requirement is that it complies with EU trade laws described in articles 101<sup>o</sup> and 102<sup>o</sup> of the Union Treaty. Each member state must analyze the conditions that exist within its own culture, its own markets, and its own historical gaming industry and decide what is best for those conditions. The regulatory frameworks of Malta and Gibraltar will be different than those in France and Italy. And France will be different from Italy and Italy from Spain and Spain from Portugal (usually a product/service that works in Spain doesn't work the same way in Portugal and vice versa, two member states with two different cultures). Each will have a different set of licensing terms, conditions and requirements and that is as it should be.

Insofar as a licensed operator was engaged in illegal activities that were not disclosed or that the regulators were not aware of when the licenses were granted, then perhaps they will review the licenses in light of this new information. But it is the prerogative of each jurisdiction to determine its own licensing requirements and standards. They may or may not choose to penalize a company for operating illegally in another jurisdiction.

*I understand that each country has different regulations, some allowing multiple i-gaming operators and all variety of games and sports betting, and others not allowing as much. I suppose I was hoping that there was a possibility that countries like Portugal, Spain, Italy, France, and the United States could come together and agree that out of respect for each others' laws, they would require as a condition for being licensed to operate, the status of not being under criminal indictment in the other countries. An agreement like that would enhance the ability of each country to enforce its own laws by making it very punitive for the operators to violate the laws of any one country anywhere.*

**A. P. Barros:** I totally agree. There are discussions on that very topic in the European Council. There is still no agreement, though, on what exactly constitutes illegal gambling. You are presuming that the determination of illegal gambling is based on the laws of the consumption country, the jurisdiction where the consumer resides. I do agree with that definition of illegal gambling. This definition constitutes the biggest achievement of the Spanish presidency report to the Council. All member states except Malta agreed on that definition. But of course, the European Union does not decide for the entire world, and with so many offshore we still are far from universal agreement. That is what we are working towards. The cooperation between the U.S., the FBI, and the international agent for law enforcement Interpol, is a big step towards establishing that criminality as it exists in even one country will not be tolerated by the international community. You know that Interpol only engages in the most serious matters of international crime. Their resources are limited and channeled only towards those activities that are deemed serious and unequivocal violations of laws and pertinent to the international community. Interpol does not care about protecting the basic lottery model or helping governments collect taxes on i-poker. So it is possible that these recent actions by the FBI and Interpol are moving us closer to a recognition that the legal status of gaming is determined by the jurisdiction where the consumer resides. And if an operator is indicted for criminal activity in one country, they should be held accountable for that in all countries.

*Or at least have their licenses reviewed to assess whether their conduct in other markets reflects the level of integrity that every country should expect of their licensed gaming operators?*

**A. P. Barros:** Again, I do not think the international community has the right to require a particular course of action like that. In fact, the international community should be on the side of respecting our differences. The authority to regulate and award a license should be the domain of each nation and not an international body. But as a concept, of course it would be best if we could all agree that the laws of each jurisdiction should be respected by all operators wherever they are based; and that criminal activities will be punished not only by the jurisdiction where

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As part of the process, the NZLC requested that GTECH and its instant ticket provider review the current situation and proposed response plans. The GTECH Instant Ticket Team was able to provide recommendations regarding sales and operations that were designed to encourage the expansion of the group whom they called “people like me.” Those recommendations expanded on the already excellent work undertaken by the NZLC of benchmarking with analogous global markets that had faced similar challenges. In addition, they were able to suggest further improvements to enhance the plans over the medium to longer term.

The program focused on three key areas of the Instant Kiwi value chain: product, communication and distribution. The portfolio of games was refreshed and a new brand proposition was developed: “It can all change in an instant.” This was supported by a new advertising campaign designed to celebrate the changes and ensure all of New

Zealand was aware that Instant Kiwi is now bigger and better than ever. The results thus far have been extremely encouraging, with Instant Kiwi sales for the first year forecasted to go up from 2010’s \$104 million to \$132 million. This is an increase of 29 percent. On average, there are 30,000 more winners per week winning \$450,000 more in prizes. As a result, the brand is more visible and viewed more positively by players.

## CONCLUSION: A NEW WAY OF THINKING AND ACTING

To thrive in this constantly changing market and sustain our industry’s relevance, it requires inventive thinking and relentless, superior retail execution. Recognizing our common goals and working collaboratively toward progressive change are the cornerstones of *Customer First*.

Partner, Align, Create, Execute and Communicate. Our lottery customers’ business challenges are our challenges. We have common goals. We are committed to earning our customers’ trust every day. ♦

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the infractions occur, but throughout the entire community of nations working together to compel operators to respect the laws of each nation. Maybe an International Treaty on gambling is needed. So yes, I would hope that insofar as these companies are found to act criminally in the United States, their status in markets where they are currently operating might be re-assessed. And that markets that are opening up in the future should factor in the track records of applicants who have been found to violate laws in other countries.

There is another “court” that can be the most powerful. That’s the court of public opinion. Public awareness of these issues and the fact that illegal i-gaming poker sites can be dishonest, violate laws, not pay taxes, and potentially defraud the players; this could lead to a respect for the importance of laws to protect the public and to hold these companies accountable. As the public and the players become more knowledgeable about this, our legislators and shapers of public policy will be more likely to support regulatory frameworks that hold operators to a higher standard. That’s why we need to nurture an international awareness, or at least a trans-Atlantic awareness of these issues. European and North American lottery operators need to work together more to create a better understanding of our industry on both sides of the Atlantic.

*The European Lottery Association has become a force for positive political and regulatory change. How does the EL Association get its members to agree on political positions and the actions to take?*

**A. P. Barros:** First of all, the majority of lotteries belong to the member state and could never bind the member state political position. The EL, however, doesn’t represent

the lotteries themselves, and thus unanimous consensus is not required for the EL action. The EL acts on its own behalf and its position doesn’t bind the lotteries or the Member states’ position. EL has a Board and an Executive Committee that take the daily decisions, according to the general declarations. The EL General Assembly approves general declarations and frameworks, e.g. on responsible gambling and such, and the EL has many groups for studying and preparing documents that can be accepted by the members to present to their member states, if they wish to do so.

Individual lotteries are free to take positions that are not always consistent with the EL Association. And vice-versa. For instance some members of EL, like Camelot and Lotomatica, are private companies. And all German lotteries, Veikkaus from Finland, the Belgian lottery, and many others, are all public operators. Santa Casa is a private entity but totally controlled by the state.

The second point is that the EL has been very engaged in European issues for many years. Some of the EL internal resolutions that establish main principles on lotteries and betting have taken more than ten years to be approved. Proposals are made, resolutions are formulated, resolutions are reworked, followed with votes by the general assembly, back to committee for further revisions – this is a complex process that takes time and a conviction on everyone’s part that it is important and worth the effort and the need to compromise. Some European lotteries, as they are part of the Public Administration of the member state, are not allowed to lobby themselves. But the European Lotteries Association is able to lobby.

*So, the European Lottery Association has lobbyists in Brussels?*

**A. P. Barros:** Yes. And while the positions it defends are usually consistent with the majority of its members, we do not require a unanimous consensus for the EL to take those positions. And sometimes we do not agree. For instance, in the early stages of the case with Bwin, the EL had different positions from Santa Casa on how to tackle the problem of Bwin, and recommended a different legal strategy. It was up to Santa Casa to decide what to do in “Brussels”. We pursued a strategy based on the conviction that the Court could be convinced to uphold the principle of subsidiarity against mutual recognition. Of course, once in court, many member states supported us, but there were different opinions about the best way to achieve our shared objectives.

The important thing is that differences of opinions not impede action and the need to always move forward. European Lotteries do not agree on everything with all its members. But we do agree that our interests need to be defended in Belgium, just like the interests of U.S. lotteries need to be defended in Washington, DC, I would suppose.

The distinction is that the EL can speak on behalf of the Association of the European Lotteries but they do not speak on behalf of any specific lottery. They do not represent Portugal or any other lottery in “Brussels”. The EL did not always have lobbyists. Ten years ago, the members wouldn’t allow it. That has changed over time and the evolution required patience and persistence and is in fact an ongoing process. We really have no choice. Other interests that conflict with lotteries, like the remote i-gaming operators, lobby hard in Brussels. We all recognize that the interests of lotteries in general need to be defended in Brussels or our stakeholders, especially the most vulnerable people, will be the ones who suffer. ♦