



UPDATE ON THE REGULATORY LANDSCAPE FROM AROUND THE WORLD

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GAMING EXECUTIVE SUMMIT 2013 IN BARCELONA: REVIEW

All the sun, sea, and sumptuous surroundings of the W Hotel could not disguise a slightly muted atmosphere at the 2013 Gaming Executive Summit in Barcelona last week. The tone was set by Quirino Mancini, SCM Lawyers, who gave a very downbeat assessment of the internet gambling sector in Italy. "A few operators are doing very well but the majority are simply surviving," explained Mancini. This is a particularly concerning view of the Italian e-gaming market because it is the model that has been adopted across many European markets.

Bwin.Party's CEO Norbert Teufelberger: "The Group's revenue performance since the beginning of April 2013 was softer than expected due to a lower than expected gross win margin in sports betting during April and June as well as competitive pressures in bingo. Ahead of the launch of our new poker product, the trends seen in Q1 in casino and poker continued during the second quarter. Whilst we retain a leadership position in our two

largest markets, competitive pressures in both the UK and Italy have continued to hold back our bingo business."

Friedrich Stickler, president of the European Lotteries Association, was on the same CEO panel. Now that the likes of Bwin.Party have fallen into line and either taken local licences or withdrawn from markets, Stickler's new targets seem to be the Asian sports books, which he deems 'illegal.'

Sean Ryan from Facebook outlined the company's plans for e-gaming and showed off the new Paddy Power real-money in-play sports betting app for the platform, as well as Zynga's new real-money poker service. It is clear that Facebook is taking a cautious approach to e-gaming and is using the UK as its test market. Facebook has a small e-gaming team and is most interested in markets that are regulated and have a sizeable population. Denmark, for example, whilst regulated, would not be a priority because of its small population. There are also no definite plans for e-gaming on Facebook in any US states that might regulate.

The fact that two of the most upbeat presentations of the conference were delivered by speakers with no direct involvement in the gambling sector – Kevin Slavin, Assistant Professor at MIT Media Lab, and David Rowan, Editor of Wired Magazine – is a good reflection of the state of certain sectors of gambling at the moment.

UPDATE ON U.S. GAMING LEGISLATION

Time was when the framing of U.S. policy on Internet gambling was the cause célèbre of the Democratic Party. Massachusetts' inimitable Barney Frank springs to mind and, more recently, Nevada's favorite son, Harry Reid. However, these days on Capitol Hill it's a different story. Right-wing Republicans are behind the two bills now under consideration in the 113th Congress.

The latest, introduced in the House of Representatives earlier this month, comes out of the Tea Party stronghold of northeastern Texas. The "Internet Poker Freedom Act of 2013" it's called, and its sponsor is 63-year-old Joe Barton, an anti-tax crusader and lifelong champion of energy deregulation and the rights of Big Oil and chairman emeritus of the House Committee on Energy and Commerce. Mr. Barton has been known to log on himself to play the "all-American game," as he likes to call it (never for real money, he adds), and this is his second go in two years at trying to make Web poker the law of the land. "I continue to be supportive of the Americans who play poker online," he said. "They deserve to have a legal, on-shore system that makes sure everyone is playing in an honest, fair structure."

Whether he's more successful in getting them one this time around is another matter. The prevailing wisdom, subscribed to by Reid himself, holds that there is little appetite in Washington for federal regulation, a politically toxic issue at best and one generally seen as best avoided. This is especially the case now that several states have taken the initiative to regulate the industry within their respective jurisdictions.

A bill introduced in the House in June by Long Island Rep. Peter King, whose hawkish views have earned him the chairmanship of the Homeland Security Committee's Subcommittee on Counterterrorism and Intelligence, has collected one co-sponsor to date, Massachusetts Democrat Michael Capuano. Barton's bill was routed on 11 July to Energy and Commerce (where Mr. King's bill has principally resided since 7 June) and the Financial

Services Committee with no co-sponsors.

Reid, who once called online poker “the most important issue facing Nevada since Yucca Mountain,” has been able to deliver nothing so far for his corporate casino constituency in Las Vegas. But the leader of the Democrats’ slim majority in the Senate has been working to mend fences with GOP leaders he angered over the election year politicking that helped doom his 2012 bill before it ever got to the upper house. Reports are he’s readying a new bill for introduction, possibly before Congress goes on holiday on 2 August, in consort with fellow Nevadan Dean Heller, the Republican whose first full term in the Senate he tried to prevent last fall.

Reid is proceeding more carefully this time. In a bid to get his own party lined up behind the need for federal regulation – and no doubt to take an initial reading of the political winds on both sides of the aisle – the Senate Commerce Committee’s Subcommittee on Consumer Protection, of which Heller is the ranking Republican, scheduled a hearing on 17 July titled “Internet Gambling: Assessing Consumer Protection Concerns.”

Barton’s bill over at the House of Representatives (H.R. 2666), like King’s (H.R. 2282), would establish nationwide oversight through a super-agency within the Commerce Department (King’s would be installed in the Treasury Department). Regulation and enforcement ultimately would lie with the secretary of Commerce and the National Indian Gaming Commission as the bodies charged with reviewing and approving the actual licensing authorities at the state and tribal levels.

H.R. 2666 is likely to run afoul of a number of constituencies whose views Washington won’t want to ignore. Unlike H.R. 2282, which would permit casino-style games and would open the market to state lotteries and the racing industry, Barton’s poker-only approach (his bill also would permit other “skill” games) restricts licenses to commercial and Indian casinos and card rooms in operation for at least five years. Moreover, its provisions would supersede any regulation the states already have in place, in contrast to H.R. 2282, which would grandfather in existing intrastate networks. H.R. 2666 also locks out for five years any entities convicted of having operated illegally in the United States post-UIGEA.

As a poker-only measure it’s more in accord with what the casino industry and their Washington lobbying arm, the American Gaming Association, might find palatable. The AGA hasn’t taken a formal position on either bill, however. King’s endorsement of casino-style games is a concern for them. The land-based sector has never been of one mind on the competitive threat posed by the Web, and those that have embraced poker did so only after the recession hit and traditional revenues tumbled.

U.S. states, led by the National Governors Association, actively opposed Reid’s abortive 2012 legislation, and it’s expected they will work to defeat both King’s and Barton’s and anything like them that attempts to supersede their historical primacy over gambling within their borders. The lottery freeze-out in H.R. 2666 will strike them as particularly noxious.

No hearings were scheduled on either, as of this writing. The prospects for H.R. 2282 are in the hands of über-conservatives Lee Terry of Nebraska, who heads the Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade, and Jeb Hensarling of Texas, who chairs Financial Services. The bill also

was sent to the Judiciary Committee, chaired by Bob Goodlatte of Virginia, who also co-chairs the Congressional Internet Caucus and is best-known in the industry as one of the leaders of the federal effort to outlaw Web gambling prior to the passage of UIGEA.

As a longstanding member and a former chairman, Mr. Barton wields some tenure on Energy and Commerce, but that’s no assurance H.R. 2666 will see the light of day, and he has acknowledged as much.

It’s interesting and telling how the responses to Congressman Peter King’s online gambling bill (H.R. 2282) so closely mirror those of all the failed attempts at federal regulation in the past: Advocates outside the commercial casino establishment are enthusiastic; they’re guarded and non-committal within; and the public lotteries and the Indian tribes and the leaders of the states where they reside are as ever skeptical and resistant.

In a broad sense these are views that speak to the historic fault lines riddling U.S. gambling policy that no regulatory scheme out of Washington, except in regard to sports betting, has been able to repair or surmount. Weigh in the near-total absence of any political capital to be gained with that to be lost from appearing to endorse Internet gambling as a matter of national policy, which is what regulation implies, and Mr. King’s bill is not expected to fare any better.

“I don’t see anything happening,” said Nevada’s Harry Reid, who heads the slender Democratic majority in the U.S. Senate and has all but given up on the possibility that either his chamber or the Republican-controlled House of Representatives will get behind the poker-only legislation he favors, let alone a bill like King’s that legalizes casino games as well.

One U.S.-based reporter in the poker blogosphere went further, pronouncing the bill, which has attracted no co-sponsors, “100% DOA” (“Dead on Arrival”).

It’s reported that for the sake of a poker bill aimed at salvaging a nationwide player pool for his Las Vegas casino constituency, Reid is trying to mend fences with the Republican opposition. But he knows the votes don’t exist and has said as much. A poker-only bill his staff had crafted last year in partnership with GOP Senator Jon Kyl, who has since retired, was bungled over election politics. Not that it had any chance, given language in it that sought to lock up regulatory primacy for Nevada and freeze out the lotteries, and it never made it to the Senate chambers.

The American Gaming Association, the Washington lobbying arm of those same Las Vegas companies and the most vocal advocates of a poker-only industry, also knows the votes aren’t there, and the legislation tossed into the void by King, a New York Republican, on which Reid was not consulted and which appears to have caught him unawares, has sparked a war of words between the senator and the AGA’s president, Republican heavyweight Frank Fahrenkopf.

Fahrenkopf, who is retiring this month, called the Reid-Kyl fiasco his “biggest disappointment” in 18 years at the helm of the association. A spokeswoman for Reid fired back at what she called “revisionist history” and later issued a statement saying, “Perhaps if Mr. Fahrenkopf had spent less time dealing with the presidential debates [he is co-chairman of the commission that oversees them] and more time actually doing his job as head of the gaming association we could have passed the bill.”

Nevada lobbyist Jon Porter, a Republican who served three terms in Congress representing parts of Las Vegas and the surrounding area, blames divisions among the various stakeholders in the debate and says casinos need to work with the lotteries and the Indian tribes and not against them.

“Those are some powerful groups,” he noted at a recent industry conference in Las Vegas.

The King bill (H.R. 2282), introduced in the House on 6 June 2013 as the “Internet Gambling Regulation, Enforcement, and Consumer Protection Act of 2013” (a title borrowed from former Congressman Barney Frank’s failed crusade of the last decade), attempts to address some of these issues by providing for licensing for all providers, including lotteries, the tribes and online race-betting, under the auspices of an Office of Internet Gambling Oversight within the U.S. Treasury Department. It allows states to opt out of the system if they choose and it would grandfather in states with networks of their own in place—of which there is one currently, Nevada, with Delaware expected to be up and running this autumn with casinos games operated by the state lottery and New Jersey in the process of drafting regulations for intrastate games operated by Atlantic City’s casinos. The AGA hadn’t taken a formal position on H.R. 2282, at the time of writing this article. The bill’s endorsement of casino-style games is a concern. The land-based sector, Las Vegas’ especially, has never been of one mind on the competitive threat posed by internet gambling and embraced poker only after the recession hit and began tearing into profits.

The states, led by the National Governors Association, actively opposed Reid-Kyl, and it’s expected they will work with same energy against the King bill and anything like it that comes down out of Washington. “We believe the federal government should be respectful of states’ rights to regulate online gaming,” said a spokesman for the National Conference of State Legislators, “and we see these bills as an affront to states’ sovereignty.” This appears to be the position of the Obama administration as well. Certainly it was implied by a December 2011 memorandum from the Justice Department clarifying the legality of state lotteries operating online.

Reid believes that, with individual states actively pursuing such licensing and laying the groundwork for networking agreements with other states and with foreign operators, the prospects for the federal government to take control of nationwide market that is estimated to be worth US\$7 billion – \$10 billion over the next five years – is small. “I felt online poker would be good for the state of Nevada,” said Reid, who recently expressed the belief in an interview with the Las Vegas Review-Journal that a “golden opportunity” was missed. I will continue to work on it, but it would be stretching things to think we could get something done,” he said. “It’s opposed by governors, lotteries and Indian tribes.”

Porter, on the other hand, remains optimistic about something happening at the federal level. “It will come back this session. It won’t be a stand-alone bill. It will be attached to something else.”

H.R. 2282 has been referred to three committees: Financial Services, Judiciary and Energy and Commerce. No action had been scheduled on it, as of this writing. Congress recesses on 2 August and returns 9 September. It will meet for 39 days after that. The session ends 13 December.

UK GOVERNMENT GAMBLES ON NEW LEGISLATION

The internet gambling sector in the UK is one of the most fiercely competitive and open markets in the world. There is no limit on the number of licences, all gambling activities are permitted – from betting exchanges through to live dealer casino games – and gambling firms can advertise their services in print and on television. All of this was permitted by the Gambling Act 2005. But the nature of the UK market could be changed by the new Gambling (licensing and advertising) Bill announced in the Queen’s Speech in May 2013.

The UK Gambling Act 2005 recognised the internet gambling licences issued by certain other jurisdictions such as Gibraltar, Malta, and the Isle of Man. This meant that operators licensed in those jurisdictions on the ‘white list’ would be able to operate and advertise in the UK. The advantage was that it enabled firms to remain ‘offshore’ from the UK and not be liable for the UK’s 15% remote gambling tax, which was the main weak area of the Gambling Act. But the proposed Gambling (licensing and advertising) Bill will bring this situation to an end.

The overall aim of the new Gambling Bill is to introduce e-gaming taxation based on a point of consumption scenario. To this end, operators wishing to take money from UK-based customers will have to hold a licence in the UK and will pay the UK rate of gambling tax on their gross win from UK players. It will still be possible for firms to be located offshore under the proposed regulation if they hold a UK licence. The Gambling Bill effectively ends the ‘white list’ arrangement, although white list licence holders will not have to go through complete relicensing process by the UK Gambling Commission.

The new bill is being promoted as offering better protection to the customer, an argument that has been used across Europe for the new internet gambling legislation that has been passed. But the Gambling Bill will bring in some extra tax revenues too. GBGC calculates that UK gamblers spent GB£ 1.72 billion on internet gambling in 2012. The majority of this spending was with companies based offshore and not liable to UK gambling tax. Under the new regulatory set up, the UK government would have collected some GB£ 260 million in gambling tax, assuming a rate of 15%. By the time the new bill actually comes into force in 2014/2015 the amount the government will collect in gambling tax will be approaching GB£ 300 million. Such an amount will not solve the UK’s debt problems but it is a useful contribution and is a tax that is fairly easy to collect.

Prior to moving their operations offshore, the likes of William Hill, Ladbrokes, Betfair, and Coral all ran successful internet sports betting divisions from the UK under the 15% tax rate. Bet365 still does so, as one of the only major betting firms that has not moved offshore. What is less certain is how online gaming – poker, casino, and bingo – will fare under the 15% rate. Few companies have ever run their internet gaming services from the UK. The evidence from other countries around Europe is that the likes of internet casino and poker do not thrive in high-tax set ups. The markets in France and Italy can hardly be described as great successes for many of the operators, although they are doing a good job of collecting tax for the respective governments.

The original model for internet gambling was based on low

taxation and a high payout to the customer. The reason that the UK became such a competitive and successful internet gambling market was precisely because it allowed operators to work to this model and advertise their services. The UK is too important a market for many operators for them to choose to leave or opt out when the new regulation is enforced but it will alter the reason for being in offshore jurisdictions for certain groups of operators.

GBGC understands that under the new Bill, revenues from non-UK based players will not be taxed by the UK government under the new arrangement. A point of consumption tax, rather than a country of origin tax, suggests that a UK-licensed gambling company will, therefore, not be required to pay gaming tax on revenues from players in the likes of Asia. So, for those companies with very few UK-based customers but who wish to sponsor English Premier League teams to advertise to their Asian-based customers, the new UK setup could look quite attractive to them.

In Gibraltar it is reported that the Gibraltar Betting and Gaming Association (GBGA) has created a legal 'fighting fund' to try and get a judicial review into the proposed UK regulatory changes, which would have an impact on the business model of many of the Rock's key licence holders. Earlier this year the GBGA made a submission to the House of Commons Culture, Media and Sport Committee in which is said: "In the event that the Government determines to proceed with the proposed legislation and fiscal reforms, the GBGA will regrettably have little alternative but to institute judicial review proceedings to challenge these measures." This statement was made before the new Bill was included in the Queen's Speech, so presumably the GBGA's challenge will now take place.

The GBGA believes that the UK government's proposals are unlawful and set out its arguments in its written submission to the committee:

"The proposed measures both separately and together with the related changes to the tax regime for online gambling are unlawful in terms of EU, national and international law and are liable to successful legal challenge."

"Absent some cogent evidential and rational basis for the change, EU law will not permit the UK to arbitrarily switch from a free market system that it specifically set up and reinforced in the Gambling Act 2005 to a significantly more restrictive regime that takes no account of licensed operators established and regulated within the EEA. It is a well established principle that where trading and fiscal rules are to be changed, the compatibility of any new rules with EU law must be examined in light of the pre-existing regime."

NEW JERSEY ONLINE GAMBLING: HOW BIG? HOW SMALL?

New Jersey will come out of the gate with an obvious advantage in terms of liquidity over tiny Delaware, its closest competitor, and Nevada, the first mover in the nascent US online market, which has the allure of Las Vegas going for it but less than one-fourth the population. It's also a market that finds itself happily sandwiched between two of the largest metropolitan areas in the country in New York City and Philadelphia.

The Wall Street view, expressed by the likes of Spectrum Gam-

ing Capital's Robert Heller and Macquarie Capital's David Berman, has been upbeat. Heller believes it could be the "savior" of a market that has seen its land-based business plummet more than 40 percent over the last six years. Berman, speaking at May's East Coast Gaming Congress, called it a "big boon for Atlantic City and New Jersey". Beyond that, estimates of the potential vary, and markedly, although nearly everyone agrees that Gov. Chris Christie's initial estimate of a \$180 million windfall for the state budget, which at a tax rate of 15 percent implies a market worth \$1.2 billion, is not realistic. The governor's forecast appears to be based on Wells Fargo's projection of a \$1.5 billion industry by 2017, which in turn derives from the bank's first-year forecast of \$650 million to \$850 million, which also appears to come down on the aggressive side.

Global Betting and Gaming Consultants own forecasts are for first full-year revenues of US\$ 246 million for casino and poker combined.

Washington, D.C.-based lobbyists Interactive Media Entertainment & Gaming Association pegged the first-year potential at \$230 million. That was back in 2010. From here things acquire more of a glow. John Kempf, managing director of RBC Capital Markets, puts the annual revenue potential in the early going at \$500 million-\$600 million. Las Vegas-based investment brokers Union Gaming Group expect the market to generate \$530 million in its first full year, growing to \$840 million "after a five-year ramp."

In a recent note to investors, UGR broke this down between \$244 million for poker (growing to \$297 million by 2019) and \$290 million for casino games (growing to \$546 million by 2019). This assumes a poker penetration rate among adult New Jerseyans of 1.5 percent in the first year – supplemented by adult visitors to the state at a rate of 0.2 percent –and a casino games penetration rate of 1 percent of locals and visitors. In estimating wagers as a percentage of per capita gross domestic product the base they use is a 2014 estimate for New Jersey of \$66,854, which is rather higher than the U.S. government's 2012 estimate of \$57,078 in current dollars and \$49,430 in real terms. (For the nation, real GDP for 2012 stood at \$42,784.) Other notable assumptions are that adult visitation to the state will grow by roughly 7.7 million over the next five years and that poker penetration will increase over that time to 2.8 percent of New Jersey residents and to 1.5 percent for casino games.

The latest edition of GBGC's Interactive Gambling Report is available now. We have revised our global internet gambling forecasts downwards from our last report in April 2013 because of the sluggish revenues from the Spanish and Italian gambling markets and the delays to i-gaming regulation in Germany. Consequently, GBGC now makes the forecast that the global interactive gambling market will be worth US\$ 44.0 billion in 2014, including revenues from Nevada and New Jersey, rising to US\$ 49.5 billion by 2017. The new Interactive Gambling Report contains updates on the i-gaming regulatory position in numerous markets including: Australia, Denmark, Ireland, Spain, UK, and the US. The report (and others) can be purchased at www.GBGC.com. ♦