

Defending the Common Cause of Lotteries: “The Controlled Expansion Theory”

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The gambling sector follows universally almost the same pattern. In most jurisdictions where lotteries are operated, this is done through a state monopoly.

The major exceptions to those rules are precisely those jurisdictions which host the illegal remote gambling operators and are the same jurisdictions which are considered as Tax Havens and/or do not subscribe to the international standards and procedures to fight money laundering (FATF).

Remote gambling does indeed not yet want to fit into the universal model, but instead creates new opportunities/challenges and issues. Furthermore, it can undermine the universal model and its values, and is often seen as socially undesirable and irresponsible (no concern about problems, no willingness to contribute to society through taxes or other means)

Lotteries, on the contrary, continue to play an important role in society.

As already outlined in the Schindler case, this role is partially within the context and partially outside the context of the EU Treaty, but is always a positive contribution to society, including to the development of the EU.

The blind application of the EU Treaty can cause a threat to the positive contribution of lotteries towards society.

Remote gambling operators try to get unlimited access to the different EU jurisdictions based upon the EU Treaty (or based upon WTO law in case of the US), while nor the EU Treaty rules nor any other international regulatory framework provide adequate legal answers to important issues (contract law, taxes, consumer defence, product and operator control).

The first, but not the only problem, is to bring the EU perspective in harmony with the role of Lotteries. The Internal Mar-

ket rules and exceptions on free movement do not provide a full and comprehensive answer. Some aspects are an exemption from those rules, while others do require different legal frameworks as the Second and Third Pillar, or even the OECD, the Council of Europe and/or the WTO.

From Schindler to Placanica, the European Court of Justice case law has clarified some points, but also created difficulties for certain governmental gambling policies as well as for the good causes funding role of lotteries. The tendency upheld in the recent Placanica ECJ judgement and in the Ladbrokes EFTA Court judgement provides for some latitude thanks to the partial recognition of the “controlled expansion” theory.

The “controlled expansion” theory was developed in the European Court by the Belgian and the French Government. What does it mean and how can it be used universally?

Under EU law a Member State is permitted to maintain a restrictive gambling policy within the context of the Treaty. The same principle has been recognised by the WTO Dispute Settlement Bodies in the context of GATS

On that point, a certain number of reasons of overriding general interest have been recognised by the case-law, such as the objectives of consumer protection and the prevention of both fraud and incitement to squander on gaming, as well as the general need to preserve public order

Moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming, may serve to justify a margin of discretion for the national authorities, sufficient to enable them to determine what is required in order to ensure consumer protection and the preservation of public order.

The restrictive measures imposed must satisfy the conditions laid down in the case-law of the Court as regards their proportionality and be non-discriminatory.

As regards the objectives capable of justifying those obstacles the ECJ made a distinction between:

- The objective of reducing gambling opportunities and channelling players away from highly addictive games (offered via the internet or other channels which are hard to suppress)

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- The objective of combating criminality (preventing the use of betting and gaming activities for criminal or fraudulent purposes) by making the operators active in the sector subject to control and channelling the activities of betting and gaming into the systems thus controlled.

From that perspective, it is possible, according to the ECJ in Placanica and the EFTA Court in Ladbrokes, that a policy of controlled expansion in the betting and gaming sector may be entirely consistent with the objective of drawing players away from clandestine betting and gaming (Placanica ruling) or highly addictive games (Ladbrokes ruling) to activities which are authorised and regulated.

In order to achieve that objective, authorised operators:

1. Must represent a reliable, but at the same time attractive, alternative to a prohibited activity.
2. This may as such necessitate the offer of an extensive range of games.
3. Advertising on a certain scale.
4. And the use of new distribution techniques.

There are several new ECJ preliminary referrals which create opportunities for consolidating the “controlled expansion” theory. The Belgian government has always shown to be a very



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active player in the defence of the lottery monopolies and will pursue this policy of active intervention in all cases referred to the European Courts.

It goes without saying that such a policy requires a monitoring approach on a national level, so as an enhanced cooperation on a ...continued on page 28

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From the Publisher ...continued from page 4

jackpots less than that? Instead of “jackpot fatigue,” Andy calls it “losing fatigue” and provides some intriguing solutions to the problem, whatever it is that you want to call it.

I trust everyone has October 3–6 marked in their calendar for the NASPL/World-Meet Conference (www.worldmeet07.com).

This will be the most important international industry conference of the year. Turn back couple pages to see the full page notice with conference details. David Gale, Clint Harris, Arch Gleason, and the entire NASPL staff and membership are making this into a most memorable event. I look forward to seeing you all there! ♦

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European level between the different Member States, in order to maintain a close contact concerning the different procedures.

By pushing through their position in ECJ cases, the member states have the possibility to contribute to the construction of European law and thus to the future of gambling in this particular area. The governments even have the responsi-

bility, not only to play a steering role in the outlining of a future gambling policy, but also to continue to provide the necessary legal support once this is set. Every case before a European jurisdiction has therefore to be seen as an opportunity to defend the interests at stake and to stop the risks of liberalisation. ♦

Midwest Millions: A New Breed of U.S. Lottery Game ...continued from page 13

74.07 percent with overall odds of winning of 1 in 2.83.

Entries in the second-chance drawings will be determined as a percentage of sales (e.g. if one state sells 60 percent of the tickets in the game, it will get 60 percent of the entries in the second-chance drawing). Each state will conduct preliminary drawings a few days before the final drawings; then the entries from those preliminary drawings will be combined for the final joint drawings. The top-prize winners in the drawings could

both end up being from one state, as could the 50 other winners in each drawing, although that isn't likely.

Both lotteries will support the game with print, television and radio advertising that will be jointly produced to achieve economy. Kansas' Van Petten knows that sales will measure the game's success. “I think the bottom line is sales,” he said. “It doesn't matter if we penetrate 100 percent of our retailer base if players don't like the game. But, I fully expect this game to sell out.” ♦

Content = Contact ...continued from page 15

instant players and on-line players, frequent players and infrequent players. We have oversimplified our approach to our markets. No wonder our player base is shrinking!

The solution to me is to extend gaming content beyond the draw or beyond the scratch. Hundreds of consumer brands, such as Coca-Cola, Proctor & Gamble, and Subway, spend millions of dollars each year to extend their customers' interaction with their brand. Through bottle caps, promotional scratch-offs, or pure couponing, those companies are taking consumers – most of them young – to web sites and other interactive forums to do nothing more than continue the contact between brand and customer. That is our challenge.

The new player will expect more from a purchasing and/or gaming experience. Just as they expect more when they buy a Coke or a sandwich, these players want more for their entertainment dollar. It is about not only more chances to win but also more chances to be entertained. Entertainment and con-

venience are essential to attracting the 20- and 30-somethings that aren't playing today.

I believe we have to intentionally blur the hard and fast lines we have lived by for years and pay more attention to what consumers expect than to what a pay table may dictate. We should utilize the now proven concept of “user-created content” (again see MySpace, YouTube, etc.) and the experiential angle of the access point (see iPod, texting, etc.) as our drivers for the next age of lottery products.

Our goal is to find ways, around the world, to prolong brand and product contact with consumers. Regardless of the legal specifics of a particular jurisdiction, we believe there is real value in using marketing leverage to attack these opportunities. Some places will use straight-out interactive gaming while others will have to execute softer interactions to stay within legal and political boundaries. Regardless, we feel these extended brand interactions will drive sales from new players. ♦