



AUSTRALIAN
WAGERING
COUNCIL

17 November 2014

Professor Ian Harper
Chair, Competition Review Panel
C/- Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Professor Harper

Review of Competition Policy

Introduction

The Australian Wagering Council Limited (**AWC**) welcomes the opportunity to make this submission, on behalf of its members, in response to the draft report (**Draft Report**) released by the Competition Review Panel (**Panel**) as part of the Federal Government's Competition Policy Review.

The AWC:

1. Supports the Panel's views that all Australian governments should review regulations in their jurisdictions to ensure that unnecessary restrictions on competition are removed;
2. Supports the Panel's view that there is no case to exempt gambling regulations from ongoing review to ensure that they are meeting their stated objectives at least costs to consumers;
3. Submits that the Panel consider amongst its recommendations that the regulatory restriction under the Interactive Gambling Act 2001 (**IGA**) (Cth), which currently prohibits Australian licensed and regulated online wagering operators from offering online in-play sports wagering, be reviewed; and
4. Seeks modification of competition law to permit industry group activity that does not have a purpose or effect of fixing, controlling or maintaining price or of restricting supply but rather to pursue self-regulatory goals that relate to issues of social responsibility, such as consumer protection, harm minimization and the development of responsible gambling codes.

The AWC

The AWC is the peak industry body representing the Australian online wagering and sportsbetting industry.

AWC members provide a recreational and social experience for over 2 million Australians balancing the legitimate right of consumers to wager on racing and sporting events with industry responsibility to ensure access to effective consumer protection, responsible gambling and harm minimisation measures.

AWC members do not offer online gaming, poker machines, casino table games, lotto, bingo or keno.

The current membership of the AWC is as follows:

- bet365
- Betfair
- Ladbrokes.com.au
- Sportsbet
- Unibet (which conducts business as Betchoice)
- William Hill Australia (which conducts business as Sportingbet, Centrebet and Tomwaterhouse.com).

Background

The Australian wagering market has changed markedly since the last major review of Australia's competition laws and policy in 1993 and in the thirteen years since the introduction of the Interactive Gambling Act 2001 (**IGA**) (Cth).

Technological developments and communications convergence are highly relevant against the context of the rapid globalisation of the industry.

The Australian Communications and Media Authority's (**ACMA**) *Communications Report 2012–13*¹ confirms this increasing scale and the depth of the digital economy in terms of the internet access, frequency of internet use, number of activities performed online, the diversification of consumer communication choices and the continuing shift to mobile devices - with smartphones being an increasingly core to Australians' communications choices (11.19 million smartphone users in Australia at May 2013, up 29 per cent since May 2012 and with 42 per cent of adults accessed the internet via a mobile phone during June 2013, compared to 32 per cent during June 2012).

In 2012-13 the proportion of internet users purchasing or ordering goods or services via the internet (online) was 76%² - a rapid increase on the 15% of adults who shopped via the Internet in 2002 and the 11% in 2001.³

Recommendations

The AWC makes the following recommendations to the Panel:

1. Ongoing Regulatory Review of Gambling Legislation

The AWC supports the Competition Review Panel's call for ongoing regulatory review of gambling legislation.

¹ Australian Communications and Media Authority's Communications Report 2012–13

² ABS 8146.0 - Household Use of Information Technology, Australia, 2012-2013

³ ABS 8146.0 - Household Use of Information Technology, Australia, 2001- 2002

Specifically the AWC supports the review of the **IGA** in relation to in-play wagering on sporting events. The AWC believes that online in-play betting should be permitted, on a platform-neutral basis as is the case in many overseas jurisdictions including the United Kingdom and New Zealand.

The **IGA** currently prohibits Australians from placing in-play bets using the internet but permits it by telephone and in land-based retail outlets (such as TAB agencies of Tabcorp and Tatts).

Amendments to the **IGA** should allow for platform neutrality and enable consumers to exercise choice in relation to the technological platform they use to place a bet.

Whilst it is understood the restrictions was originally intended to serve the public interest purpose of protecting problem gamblers this regulatory restriction adversely influences competition advantaging some areas of the wagering market over others.

This regulation is also confusing for consumers, inconsistent in its coverage, obsolete given the rapid technological changes and increased internet-usage, impacts the ability to protect the integrity of Australian racing and sports and exposes Australians to the very risks regulators sought to originally address.

The imposition of such prohibitive regulation:

- provides no additional benefits in terms of protecting Australians from the potential risk of problem gambling as maintaining the restrictions on online in-play betting only impacts the legally licensed and regulated Australian industry giving a clear advantage to unregulated and/or illegal overseas operators who will continue to offer their services to Australians in a manner that provides little by way of consumer protection and harm minimisation; and
- has a flow-on-effect that significantly reduces the revenue Australian sporting codes and organisations receive from Australian online wagering operators as more Australians bet in-play on unregulated offshore websites that contribute nothing to sporting organisations in terms of product fees and sponsorships or to the Commonwealth and State/Territory governments (e.g. they do not pay taxes in Australia).

Ensuring Australian consumers have the option of wagering online in-play markets with licensed Australian based wagering operator's addresses two significant risks which exist under the current anomaly.

In the first instance, it ensures that the thousands of Australians who are spending hundreds of millions of dollars wagering on in-play markets with illegal offshore wagering operators receive protection in terms of appropriate harm minimization and the protection of their funds and their personal information, including bank account details. An estimated 2,600 black-market offshore operators in Asia are

actively offering online in-play betting on sport to Australians in contravention of Australian law.⁴

Secondly, it provides significant enhancements to the protection of the integrity of the sports on which the wagering occurs. Licensed Australian-based wagering operators have integrity agreements in place with all major sporting codes. These agreements allow for the sharing of information regarding bets placed and betting patterns such that any suspicious betting behaviour is reported to the sporting code for investigation. Further, where those bets are placed with account-based wagering operators there is complete and instant visibility over the identity of the person placing the bet and the amount and the location from which they are betting. This is a benefit which is not available where in-play wagering is done anonymously with cash at retail TAB outlets.

This recommendation is also in line with the preferences of the major sporting codes. In relation to in-play betting with illegal offshore websites, CEO of Cricket Australia, James Sutherland said:

*"It's very significant. The first thing for us is all about integrity. It's all about making sure that the public's faith in the game, the confidence in the game about it being a fair contest is the absolute priority and that's what we are focused on. When you talk about in-play betting, one of things that perhaps isn't so well understood is that people can bet in-play in Australia, but they do it offshore. So it follows that if it is something that people are able to do here in Australia, then we should create some sort of framework around it to make it protected and protect it from those who want to get to the game in a way that be inappropriate or reduce that faith in the fair contest. That's where COMPPS has come to a position of supporting in-play betting and working down that path with government and others to get the end result."*⁵

Academic opinion also strongly suggests that jurisdictions that implement a strict regulatory regime for the provision of online gambling services have been more effective in protecting consumers than those that have adopted a prohibition approach.⁶

International research has also concluded that regulation of the online gambling market, which incorporates strict harm minimisation measures, is preferable to prohibition.⁷

This research should provide the Competition Review Panel with the assurance that regulation of online in-play betting is preferable to prohibition and will not pose any heightened risks to Australian consumers from a net public benefit perspective.

⁴ The International Centre for Sports Security

⁵ James Sutherland, CEO Cricket Australia, 12 June 2012

⁶ See, for example, McMillen 2003, Nelson et al. 2008, Griffith et al. 2008, Broda et al. 2008, Cotte and Latour 2009 & Sparrow M "Can Internet Gambling Be Effectively Regulated: Managing the Risks" http://www.house.gov/apps/list/hearing/financialsvcs_dem/sparrow.pdf

⁷ See, for example, McMillen 2003, Nelson et al. 2008, Griffith et al. 2008, Broda et al. 2008, Cotte and Latour 2009

2. Competition Law Amendment to ensure Compliance in relation to Issues of Social responsibility

The online wagering and sportsbetting industry is the subject of close scrutiny from both community groups and regulators seeking to minimise any harm that may result from gambling. AWC members are committed to addressing these consumer protection and harm minimisation concerns.

Both the AWC and its members engage actively with regulators at both the state and federal level. At the state level, this engagement is primarily with racing and gambling regulators. At the federal level it is primarily with communications and sports regulators. In recent years, these regulators have asked the AWC and its members to adopt self-regulatory measures identified as being in the interests of responsible gambling.

The AWC considers that the implementation of industry-wide self-regulatory codes of conduct is the optimal way to ensure that the operations of online wagering providers accord with the promotion of responsible gambling and ensures that industry goals are balanced with community expectations and public interest.

Under current arrangements, an authorised person, nominated by each AWC member, must give consent to the AWC to lodge a Notification of Collective Bargaining with the Australian Competition and Consumer Commission on a member's behalf to enable them to obtain authorisation to undertake such self-regulatory activities - even when the conduct is in the public interest and obviously in consumers' best interest.

The AWC, therefore, proposes modification of the current prohibitions under the Competition and Consumer Act to allow competing firms under the umbrella of an industry group to engage in coordinated behaviour in relation to issues of social responsibility, such as consumer protection, harm minimization and the development of responsible gambling codes.

This exemption should only be given to industry groups where a proposal does not have a purpose or effect of fixing, controlling or maintaining price or of restricting supply but rather to pursue self-regulatory activities that produce consumer benefits in the areas of responsible gambling.

Conclusion

Australian licensed and operated online wagering operators play a vital role in protecting Australians in terms of responsible gambling and protecting the integrity of Australian racing and sport.

The AWC does not advocate any reduction in probity, harm minimisation or consumer protection measures, but rather has, in this submission identified scope to increase the net public benefits overall by removing unwarranted and uncompetitive operating restrictions on online wagering operators and ensuring industry can pursue self-regulatory activities that produce long-term consumer benefits and enhanced responsible gambling measures.

Adoption of positive and appropriate regulatory reforms in these areas will allow online wagering operators to compete with land-based domestic retail operators and with the illegal offshore market whilst maintaining high standards of probity and consumer protection.

The AWC looks forward to continuing to work with governments, sporting and racing bodies and other industry stakeholders to ensure it can continue to achieve this outcome.

Thank you for the opportunity to make comment on the Competition Policy Review. If you require further information please hesitate to contact me on 02 8079 5204

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris Downy', with a long horizontal stroke extending to the right.

Chris Downy
CEO