

Report from the EL (European Lotteries Association) Legal and Regulatory Work-Group on Advertising

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One of the most important discussions currently taking place in several European countries concerns advertising and gambling. From a public policy perspective, advertising and gambling have always been a sensitive issue. On the one hand, regulating a gambling market should be about protecting the players from excessive gambling and gambling addiction. On the other hand, communication and advertising around the legal offer of games-of-chance and lotteries is a necessity in order to channel players towards the legal offer, and away from illegal operators who are not accountable to proper standards of integrity and responsible gaming. There is a certain tension there, and a balance must be found between attracting players to the legal offer and stimulating the players to play more. But where is the balance? For instance, if you advertise the jackpot of a draw game ... Is that channeling the players to the legal offer, or stimulating the players to play more?

One line of defense often invoked by

illegal gambling providers facing criminal proceedings is to claim that the gambling policy of an EU Member State is contrary to the EU Treaty because that gambling policy is not aimed at protecting players in a coherent and systematic way. They say: “look at how much advertising is done by the monopoly holder. That advertising is intended to maximize revenue for the state and certainly not to protect players”. These criminal proceedings then lead to preliminary questions for the European Court of Justice.

In this way, the European Court of Justice has made a lot of rulings in recent years, trying to provide guidelines on how Member States should structure their gambling policies to be in line with the EU Treaty.

In recent years, often under pressure from illegal gambling providers, several Member States have opened their gambling markets in one way or another to an increasing variety of gambling categories, with most being operated by private enterprise. In other words, the gambling market is divided between the monopoly holder on the one hand, and other gambling providers on the other hand. As a result of this opening



of the markets, the non-monopoly gambling providers were granted the right to advertise in a legal manner. Since every provider wants to gain as much market share as possible and as quickly as possible, when a gambling market opens up, the so-called ‘small gambling start-ups’ begin to advertise in a massive way. They are omnipresent in time and space. If they are criticized for saturating the market with so much publicity, they typically point the finger at the state lottery operator and claim that the monopolist is the real problem. Unfortunately, some politicians go along with that story, advocating for new and strict rules for the monopoly holder without imposing the same rules on the newly legal gambling providers. It appears that the rationale for this inequity is that the monopoly holder should be held to a higher standard and set the good example, that the newborn legal gambling providers



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need more flexibility to fight against the illegal gambling providers, and that restricting their ability to advertise will only favour the illegal gambling providers.

But the Court of Justice is not blind or naïve and they do see what is happening, issuing an interesting ruling last year:

EU Court of Justice C-920/19: Advertising

The advertising policy of a monopoly holder should not be assessed in an isolated way, but by taking into consideration the whole context of the gambling market and, in particular, the advertising practices of other legal or illegal gambling providers on the market.

Any advertising content has not, in itself, an incentive effect on excessive expenditure in relation to advertising. It must therefore be examined whether the extent of advertising is strictly limited to what is necessary to channel consumers

into the controlled gambling networks which implies an analysis of the proportionality of the commercial strategy of the monopoly holder in the light of all the relevant circumstances, and not an isolated analysis of an individual advertisement. (§47)

The advertising practices of the monopoly holder, being part of its commercial policy, and the state control of the activities of the monopoly holder are only some of the elements that must be taken into consideration in its overall dynamic assessment of the existence of a state policy to encourage participation in the games of chance covered by the monopoly. (§49)

Among the elements relevant for assessing the coherence of the dual system of organisation of the market, other than the commercial strategy of the monopoly holder and the state control of the latter's activities, include the increase in the commercial activities of the monopoly holder as well as the advertising practices of potential private operators (such as

aggressive advertising practices by private advertisers in favour of illegal activities or the use by them of new media such as the Internet.) (§50 - §52)

Article 56 TFEU must be interpreted as not precluding a dual system of organisation of the market of games of chance solely on the ground that the advertising practices of the lottery and casino monopoly holder are aimed at encouraging active participation in gambling, for example by making gambling trivial, by giving it a positive image through the use of the revenues for activities in the public interest, or increasing its attractiveness through eye-catching advertising messages that promise large winnings. (§53)

It is encouraging to see the Court of Justice assuming the defense of the monopoly holder and saying, for example, that a national court must not focus its assessment on the specific advertising message of a monopoly holder, but that such an assessment includes an analysis of the proportionality of the commercial



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strategy of the monopoly holder in the light of all the relevant circumstances.

While the advertising practices of the monopoly holder will continue to be taken into consideration, the state policy which manages the overall dynamic assessment of the games-of-chance operator must analyze the wide variety of factors that impinge on the issue of channeling play and protecting the consumer.

Among the elements relevant for assessing the coherence of the dual system of the organisation of the market, which include the increase in the commercial activities of the monopoly holder but also the advertising practices of other operators (such as aggressive advertising practices by private advertisers in favour of illegal activities, or the use by them of new media such as the internet).

So therefore, advertising practices of the lottery monopoly holder that are aimed at encouraging active participation in gambling, for example by making gambling trivial, by giving it a positive image through the use of the revenues for activities in the public interest, or by increasing its attractiveness through eye-catching advertising messages, do not in themselves constitute a violation of the EU treaty.

You will remember that during the last EL congress held in Antwerp, a resolution was adopted which stressed the importance of subjecting more risky games of chance to stricter rules in terms of advertising. Perhaps it would be useful to work on an update of this resolution in light of this jurisprudence, emphasizing that the regulation of advertising requires a differentiated approach and that, in addition to the risk level of games of chance, numerous other aspects must also be taken into account, such as

- market organization, 100% monopoly or a dual organization,
- the existence of illegal gaming providers and the effectiveness of regulators to fight against it,
- the marketing policy of a gambling provider,
- the rules on responsible gambling that are applied,
- are there any playing limits used or not, etc.

The Legal & Regulatory WG would like to explore this in the coming months with the Marketing and Communication working group and the CSR and responsible gaming working group.

The Risks involved with building a sustainable business model on Apple's & Google's ecosystems

This topic of advertising brings me to a second topic that I would like to address. To the extent that public advertising via paid media for lottery games would become heavily restricted, owned media or direct communication with players becomes all the more important. One of the means of doing so is communication via apps.

Many lotteries have invested in this type of communication in recent years, as has the National Lottery of Belgium.

Timeline of Google Play Store

- 2008: Launch of Google Play Store
- 2012: Belgium Lottery launches its lottery app.
- 2016: Google opens access for gambling in its play store, but it is limited to four countries.
- 2021: Google opens access for gambling apps in the play store in an additional 15 countries, including Belgium.

From then on, the difficulties arise, because Google imposes a number of conditions. Google Gambling policy requirements:

- Approved gambling application form
- App target audience is 18+
- App downloadable and usable in region/country covered by licence
- An Adult Only content rating (PEGI 18) should be used. Therefore there is a **Google Age verification**.

The Google Age Verification process functions like a black box. It's not clear how it works and/or if its treatment of the app users is consistent and systematic, or random and arbitrary. Some users are confronted with questions or requirements that others are not. But for those who are confronted with it, the age verification process is an inconvenient journey. There are in fact two ways of doing it.

The first possibility is to use a credit card. In that case, the user must provide the number of his credit card with CVC code and expiry date, after which Google will check the correctness of these data by performing a small transaction. For many users, this is not a comfortable feeling. Certainly not in a time of fishing and other forms of digital fraud.

But there is a second possibility: ID verification. In this case, the user must take a picture of his ID card that clearly shows the date of birth. The ID card will then be analysed by Google verification services against fraud and abuse. What happens to the user's data afterwards is not clear. Also this process does not give a comfortable feeling in the light of strict privacy rules. In other words, there is a real chance that this will have a huge impact on the willingness of users to continue using the Google app.

And all this while lotteries are already subject to strict rules in our own countries regarding age verification. Why should tech platforms impose their own control process and insert themselves into the position of our regulators and governments who oblige us to use more effective and accurate systems of age verification?

The importance of a well-functioning app is profound, especially in the light of stricter advertising restrictions.

Today the Belgian Lottery app represents 500,000 monthly app users on 9 million 18+ inhabitants, with 14% of retail draw sales (Lotto & EuroMillions) being scanned for results via the app. There is no play-in app yet. We are studying the efficacy of launching a play-in app, but it is very hard to make profound economic and strategic trade-offs knowing that tech platforms can decide to change the rules overnight without us having a say in it. It is quite difficult to enter into dialogue with them and it seems that their requirements are very formalistic.

This brings us to the conclusion that lotteries are more and more regulated in their business by tech platforms, not just by governments and regulators. And that should make us concerned. This is why it is important for EL not only to follow the work of the European Commission or the European Parliament, or the rulings of the Court of Justice, but also to follow the policies of these tech platforms.

It would be good to gather more information about the practices of tech platforms by asking other lotteries about their experiences.

The Legal Working Group suggested the creation of a specific task force to follow up on this issue, which should be extended to include, for example, marketing experts. If you want your lottery to be part of this, do not hesitate to contact us.

Finally, it would be good to join forces at the EL level, but also at the WLA level, to enter into discussions with Google and Apple about this issue. And of course, we are counting on the support of our technology partners, because they too can have an important impact in this debate

with tech platforms to enable the sustainable growth of lotteries.

The age verification for a user is an inconvenient journey. It might impact the conversion rate of the download page and the active userbase. Building a sustainable business model on Apple's & Google's ecosystems has risks. Tech platforms can decide to change the rules overnight without us having a say in it. As a lottery we face a *fait accompli*. It is very difficult to enter into dialogue with tech platforms and it seems that their requirements are very formalistic.

- What's your experience with the age verification done by tech platforms?
- What's the impact on your KPI's? (downloads, conversion rate, active users). Do you notice a drop off or other impacts due to sudden new and strict processes that are imposed by tech platforms?
- Do you receive questions from players who have problems with verifying the google account or accounts of other tech platforms? Do you have a system to assist them?

Conclusion: Lotteries are more and more 'regulated' by tech platforms. Let's work together and join forces with the objective to open up a dialogue on the EL / WLA level with Google & Apple. First, take an inventory of the experiences of lotteries all around the globe to clarify the nature and scale of the problem. An ad hoc task force could be convened to investigate and try to measure the impacts on the lottery business. Second, connect with social media platform providers to encourage the development of solutions that will benefit both them and us. ■

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