

The briefing: Remote gaming – consultation ends and the ministry digests



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Dr Alan Littler, gaming lawyer at Kalff Katz & Franssen, provides an update on changes to gaming regulation in the Netherlands

As previously described in *Remote gaming – towards a regulatory regime* (INTERGAMINGi Issue 4, 2013) the Dutch Ministry of Security and Justice (“Ministry”) published a proposed bill for the regulation of remote gaming on May 22, 2013.

The objective of this exercise is to amend the primary legislation on which the entire domestic gaming landscape is based, namely the *Wet op de kansspelen 1964* (Betting and Gaming Act), so as to introduce a regulatory framework for remote gaming. From the publication of the proposed bill until July 22, 2013, a public consultation period ran during which stakeholders could submit their views on the draft text.

The Ministry has now harvested a substantial number of submissions which it is now digesting. Stakeholders could select for their submission to be treated confidentially or made available for public perusal. In total 52 submissions are available on the government’s internet consultation webpage with a few others scattered across various stakeholders’ websites.

The aim of this brief article is to provide an impression of the views contained within those submissions made public which, by and large, represent the views of the incumbent operators but also healthcare organisations, internet service providers and payment service providers.

Given that reform of other areas is on the cards, such as the introduction of a transparent licensing procedure for offline lottery licences and the privatisation of Holland Casino, many incumbents appear uneasy about the piecemeal approach to reform. The impression is given that irreversible change will be unleashed on their business models by the absence of a more integrated approach to reforming the national market. Additionally some incumbents fear that the definition of remote gaming as currently proposed will entail that their “e-commerce” activities, whereby the internet constitutes a distribution channel for services offered offline, will fall within the scope of the proposed regulatory regime. Questions as to the boundaries of remote gaming abound.

A general consensus prevails regarding what

many parties consider to be a lack of ambition on the part of the government as it seeks to channel only 75 per cent of the market into the locally licensed supply. Although seemingly not an immediate concern of the incumbent operators, voices in the remote industry and the Gaming Authority question whether such “channelling” objectives are obtainable given the effective tax rate on remote gaming licensees which is estimated to be at least five per cent above the headline rate of taxation of 20 per cent GGR.

Taxation is proving to be a hot topic and not least because of the proposed differential rate, with remote operations being subject to 20 per cent GGR and land-based gaming to 29 per cent (GGR or prize paid out). Many stakeholders argue that the rate should be the same in some instances, therefore the tax rate should be reduced for the land-based sector, but this could have budgetary consequences for the government. The charity lotteries and their beneficiaries, some of which also delivered submissions supporting the current charity lottery model, fear that regulating the remote market will reduce their income. Indeed, there were calls for remote gaming licensees to be required to remit 40 per cent GGR to “society”, this being defined as charities and the treasury.

Support for measures proposed to prevent addiction was thin on the ground. It has been proposed that operators, including Holland Casino and the gaming arcades, will be obliged to monitor player behaviour and should that behaviour signal a problem, intervene and possibly suggest to a player that they voluntarily exclude themselves from all such gaming services. Excluded players will be entered into a national central register covering all remote licensees plus Holland Casino and the gaming arcades.

Should a player not follow an operator’s advice to exclude his or herself then that operator can refer the case to the Gaming Authority which will be able to involuntarily include the player in the central register. Criticism from some parties points towards the fact that there are no mandatory upper play or loss limits whilst complaints as to the burdensome nature of the monitoring obligation also arise.

Addiction prevention and treatment centres

also question the appropriateness of involuntary exclusion with the potential for conflict between “prevention and profit” also being raised. The currently hazy duty of care on operators is a cause of much consternation whilst it has been noted that operators will likely absolve themselves by referring players to the Gaming Authority which will then err on the side of caution and readily involuntarily exclude players from the applicable gaming services.

The proposed bill seeks to broaden the scope of the prohibition on facilitating the provision of unlicensed gaming in the Netherlands so as to bring payment service providers and internet service providers clearly within its coverage. It is proposed that the Gaming Authority will have the competence to deliver decisions binding providers to cease the provision of their services to operators unlawfully providing services in the Netherlands. Considerable criticism has arisen from among ISPs given the apparent lack of any prior judicial review when such decisions are rendered and conflict with the principle of net neutrality which is enshrined elsewhere within Dutch law. PSPs appear to have responded with less hostility, opining that such an instruction could offer adequate legal grounds to terminate relationships with remote gaming operators (presumably only regarding Dutch facing operations).

Having digested the views contained within the stakeholders’ submissions, it can reasonably be anticipated that the Ministry will revise aspects of the proposed bill and then formally submit it to the lower house of parliament sometime during autumn 2013. It remains to be seen whether radical changes will be made to a text, which on balance, was relatively well received by the remote sector.

Formally speaking, the legislative amendments which the (revised) bill will result in should be on the statute books by 2015 with the anticipation that remote gaming licensing will commence in the same year. In the coming months much will depend upon politics and the reception the State Secretary for Security and Justice receives before parliament.

The cards are currently being shuffled by the Ministry and time will show the hand which the remote sector has been dealt.