

Early reactions to the future Dutch regulatory regime

In December 2012 Dr Alan Littler and Justin Franssen, now of Kalff Katz & Franssen Attorneys at Law, featured an article in the World Online Gambling Law Report, which explained that the Dutch remote gambling model had been conceived and that its delivery into the world was pencilled in for 2015. A year on, although no precise date can be given for when the licensing regime will flutter into life, it nevertheless seems that 2015 will be a year of remarkable change for the Dutch gambling landscape. Alan and Justin now provide a detailed account of developments and concerns surrounding the impending regulation of the Dutch gambling market.

The regulation and licensing of remote gambling, as opposed to an outright prohibition, is extremely significant but will not occur in isolation from other reforms in the Netherlands. Other parts of the landscape are up for renewal; some parties may feel that renovation is required whilst other interested parties may take the view that 'if it ain't broke, don't fix it.' Nevertheless, the introduction of a regulatory regime for remote gambling is only one strand of the government's modernisation process. Effort will also be spent on introducing a transparent licence allocation procedure for the award of semi-permanent lottery licences and the privatisation of Holland Casino. With the Ministry of Security and Justice, along with the Ministry of Finance, having published a draft bill for the regulation of remote gambling in May 2013, these two other strands have yet to be honoured with the publication of any legislative

proposals. Notwithstanding the absence of detail in this regard the implications of creating a regulatory regime for remote gambling which is open to new market entrants whilst reforming the land-based sector creates plenty of scope for uncertainty amongst incumbent operators.

Uncertainty can generate challenges and opportunities, something which has not escaped the attention of politicians, as shown by the parliamentary questions which were tabled during the course of 2013. Whilst this contribution does not attempt to predict the moves that incumbents may attempt to make in light of regulatory changes on the horizon, it will detail some of the early reactions to planned reforms in terms of the possible behaviour of market actors.

One area of concern amongst some stakeholders is that the current lottery operators may not be able to sustain existing levels of contribution to good causes because of competition from future '.nl' licensees'. Parliamentary questions even arose from the spokesperson for the gambling dossier of the State Secretary's own party (submitted in September 2013 by Foort Van Oosten MP). These questions followed earlier voices during the setting of the nation's sports budget, which feared that contributions from De Lotto to sports would diminish. A parliamentary motion was even filed on 18 November 2013 by Hanke Bruins Slot MP, calling for the opening up of the remote gambling market to be conditional upon the contribution to good causes, including sports, remaining at least at current levels. This motion was quashed in the House of Representatives, the lower chamber of the Dutch parliament, in December 2013.

According to the May 2013 draft

bill online lotteries will be excluded from the product range remote gambling licensees will be permitted to offer, because of an alleged lack of demand. One fundamental element of the future regulatory regime is that offerings should reflect consumer demand. Therefore, all incumbent lottery operators will be doubly hit; firstly by uncertainty as to whether they will hold on to their current licence following the introduction of a transparent licence award procedure in 2015, and secondly, the opening up of the remote gambling market legitimising the presence of some operators, and undoubtedly encouraging new market entrants whilst the incumbent lotteries will, according to the draft bill of May 2013, be deprived of the opportunity to offer their core product(s) in the new environment.

The aforementioned questions posed from within the State Secretary's own party made reference to fears noted in a September 2013 newspaper article, expressed by the director of the charity lotteries, that their contribution to good causes would be substantially reduced'. When responding in November 2013 the State Secretary was robust in rebutting these fears. He noted that no reasons existed so as to expect that the contribution to good causes and sports would substantially decline after regulating online gambling. Reference was made to the fact that research does not show that substitution between remote gambling and lotteries exists, that consumer demographics differ for each sector, and that a *de facto* remote gambling market already prevails in the Netherlands, despite which charity lotteries' annual turnover has grown.

Nevertheless the State Secretary noted that no guarantee could be

given that no substitution would occur whilst recognising the importance of the continuity of contributions to good causes and sport to society. Therefore, he added, several measures have been incorporated into the draft bill. One such measure will be the competence of the government to decide that remote licensees must provide a contribution to charitable causes. Nevertheless the State Secretary appreciated that as new market entrants will return a large proportion of the stake to the player as prize money, large donations to good causes should not be expected. To a degree deference is made to consumer choice. Remote gambling operators will be free to profile themselves on the basis of contributions to good causes, and lottery licence holders will be able to apply for remote gambling licences, and thereby offer online services to 'complement' their offline offering. Consumers will, in the State Secretary's eyes, decide whether to partake in remote offers without a commercial objective whilst contributing to good causes and sport, or to shareholders. Evolution of the market will thus depend on consumer preferences and not solely on regulation and the preferences of operators.

Whilst concerns about diminished contributions have been expressed in the media and through parliamentary questions, on other occasions the charity lotteries have expressed their intent to move into the remote gambling sphere¹. If they are to do so, then the (Dutch) National Postcode Lottery will join its cousins in Sweden and the UK. Currently under the so-called 'e-commerce exception' the charity lotteries' online offering is limited to selling tickets for their offline draws. In contributing to the consultation on the draft bill the charity lotteries

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noted that they would seek to provide forms of remote gambling other than their current offering so as to remain relevant in the market, although such new products were not expected to generate revenues for good causes to the extent of their primary lottery products². Simultaneously they called for the ability to be able to offer lottery products online. This reflects the June 2013 NRC newspaper article, which noted how they would seek to enter the remote market with new products.

Another point which has generated parliamentary attention is, notwithstanding pending privatisation, Holland Casino as the land-based monopolist of casino gambling entering into a contract with a software provider (Playtech) for the provision of free to play online casino, bingo and poker. In response to parliamentary questions in February and December 2013, the State Secretary noted that he, along with his equivalent in Finance, was abreast of Holland Casino's plans given their 'pseudo-shareholder ship' in the operator. Significantly the State Secretary responded in the negative to the suggestion that Holland Casino will certainly be awarded a licence for remote gambling, noting that there is 'no guarantee' of this occurring. The December 2013 questions were broader in nature and sought to establish whether it was legal for (non-local) remote gambling operators to establish contracts with Dutch operators whilst it is far from certain that the market will open in a manner that suits the remote operators. Tellingly the State Secretary states how operators, 'including the current licence holders,' are free to prepare themselves for an eventual opening up of the Dutch market. Specifically regarding Holland Casino, the State Secretary noted

how, through adhering to European public procurement rules, the monopolist concluded a contract with 'the winning market party.' It was reiterated that Holland Casino, as an applicant for a remote gambling licence, will have to comply with strict licensing requirements to qualify for a licence, just like all the other applicants. Given the plans to regulate remote gambling and the privatisation of Holland Casino the State Secretary considers that such actions amount to 'responsible entrepreneurship.'

In what form the new market will settle will depend to a large extent upon the international and national reaction to the forthcoming remote gambling regulatory regime, the implications of the transparent licence allocation process and the eventual privatisation of Holland Casino. Details as to how the government foresees the latter two changes taking shape will hopefully be made public in the coming months. How consumers spend will also shape the future. Even if the majority of the legislative changes are on the statute books by the end of 2015, the real implications, across the entire national gambling landscape, will only surface thereafter.

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1. 'Schippers: sport moet inkomsten uit de gokmarkt behouden,' NRC, 19 November 2013.

2. 'Webgokken grote dreun goede doel, loterijen vrezes verlies inkomsten,' Telegraaf, 14 September 2013.

3. 'Interview Boudewijn Poelmann: Ongekroonde koning van goede doelen', NRC, 29 June 2013.

4. 'Reactie Nationale Postcode Loterij, BankGiro Loterij, Vrienden Loterij (Nationale Goede Doelen Loterijen) in de consultatie kansspelen op afstand, 19 July 2013.