GERMANY: A DEEPLY DIVIDED MARKET

FOLLOWING A SERIES OF landmark court rulings, a "chaotic situation" has emerged in Germany for both monopoly and private operators

RECENT COURT RULINGS by the European Court of Justice (ECJ) and German judges has further shaken the fragile foundations of the country's gaming monopoly based in its State Gambling Treaty.

These ructions began late last year when respective CDU and FDP parliamentary group leaders Hans-Jörn Arp and Wolfgang Kubicki in the German state or Länder of Schleswig-Holstein announced that in 2011 remote gambling operators would be able to obtain online sports betting, casino and poker licences based on "the Danish model" – a 20% gross profit tax – and be able to operate when the current Treaty lapses from 1 January 2012 onwards.

The ECJ ruling in the Carmen Media case and others came in September last year. This was followed in November by Germany's highest civil court ruling that lottery provider Westlotto could not be granted injunctions against Bwin. Later that same month, Germany's highest administrative court in Bavaria ruled that the monopoly could only be compliant with European law when all gambling sectors of the state took equal action towards preventing gaming addiction as manifested in the German State Gambling Treaty.

These declarations have come together to form what German gaming law authority Wulf Hambach of lawyers Hambach & Hambach calls "the coherency test of the monopoly", meaning that if the plaintiff can prove inconsistency of the application of its gaming policy at federal or Länder level, or if state-licensed lottery or sports betting operators are advertising in an aggressive manner, this makes the Treaty illegal under EU law.

But this has led to a "chaotic situation" for both monopoly and private operators, says Hambach, "[b]ecause now the private operators are relating to the ECJ decision of 8 September, that of the federal civil court, the federal administrative court, but nobody has clear guidelines, so it's now time for the politicians to move."

With a view to obtaining a firm view of the ECJ ruling and drafting a new law, the 16 individual Länder ministers responsible for gaming were scheduled to meet on 15 December last year.

These developments would logically point towards Germany developing "modern regulations for online gaming", as Bwin's co-CEO Norbert Teufelberger stated following his company's court victory over Westlotto.

But it appears the latest drafts of the "new German State Gambling Treaty" are going in the opposite direction, according to Betsson's country manager for Germany, Austria and Switzerland, Daniel Bradtke, thus presenting new cause for concern for private operators.

"The Länder are aiming to strengthen their gaming monopoly and continue to legally block remote online gaming sites such as Betsson.com", Bradtke told *eGaming Review*.

Indeed, only Schleswig-Holstein, which Bradtke calls "the 'Robin Hood' of all gambling enthusiasts in Germany", has actually drawn draft legislation, which, at the time of going to press, will have its first reading on 16 December in its parliament.

FDP parliamentary group leader Kubicki has however stated that Schleswig-Holstein will forge ahead with its licensing plans, even if a collective decision is made by the Länder to continue upholding the monopoly.

And with Länder roughly split into three positions on the issue – one occupied by Schleswig-Holstein, another by hardcore pro-monopoly Länder such as Rhineland-Palatinate and North Rhine-Westphalia, and another of five states considering opening sports betting to private operators, Germany is likely to regulate on a state-by-state basis resulting in a domino effect, adds Hambach.

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> **Daniel Bradtke, Betsson**

Bradtke argues it will be the customers who will ultimately decide the fate of the German gambling monopoly. "Customer needs and demands cannot be regulated in this way, and state gambling revenues will continue to decline, whereas the gross gaming win of online operators from 2005 to 2009 grew by an average of 30% a year."

The failure of the German model to "dry out to a market that is licensed and regulated in other Member States," in Hambach's words, is further reinforced by Gold Media-provided data showing that €7.3bn of the €7.8bn staked in Germany in 2009 was unregulated remote gambling, representing 94% of the total.

But with the 16 Länder deeply divided over egaming policy, and further court rulings early next year set to further muddy the regulatory waters, operators having access to a single German egaming market looks to be a minimum of three to five years away, predicts Hambach.