

White Labelling in Regulated Markets



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Despite the European economic downturn, the online gaming industry continues with its relentless expansion. Gross Gaming yield in Europe in 2003 was €1.28 billion. This rose to €8.75 billion in 2009, and is projected at €13.94 billion for 2013¹.

As a result, more and more countries are seeing the need to introduce new regulatory models and licensing systems to generate revenue, and to protect both operators and the individual.

Applying for a licence in the newly regulated markets is a costly and lengthy process. Following the mergers of several key companies in the industry, there is little room left for new brands and smaller operators seeking commercial success.

White label solutions, whereby a new online casino utilises the resources, and, often, licence of another operator, who may have greater resources available for use and sharing, have traditionally been used by smaller operators wishing to compete.

However, the increasingly regulated marketplace means that white label solutions are not as easy to set up as they were in the

past: the legislative structures in place do not necessarily recognise the essence of white labelling and or the commercial needs of the contracting parties.

This article explores and considers the, perhaps unintended, regulatory, and associated practical restrictions, with offering white label solutions in the newly regulated European markets of Denmark, Italy and Spain.



White Label Solutions...historically

White label agreements typically set out the commercial terms governing the relationship between the licensed online virtual casino operator in possession of a gambling license (the 'Licensor') and the online virtual casino seeking to utilise the licence and or other assets of the Licensor (the 'White Label Partner'). White label agreements vary in content depending on the requirements of the White Label Partner, and the resources that the Licensor can offer the White Label Partner.

These agreements attempt to balance the business and commercial interests of each of the parties.

White label agreements also often work off the requirement that the White Label Partner will operate off the gaming licence of the

¹ Source H2 Gaming Capital February 2012
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Licensor. The services they cover may also include use of the Licensor's technical or operational infrastructure, support, transactional processing, maintenance, affiliate programme, risk and fraud screening.

White Label Solutions in Newly Regulated Markets

The new gaming licencing regimes in Italy, Denmark and Spain vary in the way they address white labelling arrangements, which has created substantial confusion and uncertainty for the operators licenced in these jurisdictions.

Typically, a smaller operator may wish to enter these markets in the capacity as a white label operator if it did not have the time or resources to submit a licence application, or it may want to test the waters and see how well its brand is received by the general public, before applying for a licence itself, if and when the tender process re-opens.

Before a White Label Partner and Licensor consider entering into a white label agreement in either the Italian, Danish or Spanish markets, they need to recognise that any arrangement they might enter will not reflect our typical definition and understanding of a white label agreement, as described earlier.



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Italy ...the challenges

In Italy, the fundamental challenge a White Label Partner and Licensor must overcome is that, under the current gaming legislation, the player at the virtual casino is only allowed one registered account under each licence.

Therefore, given that the primary function of a white label agreement often involves the casino licence holder granting a licence to the White Label Partner to operate off the Licensor's gambling licence, it is difficult to find a practical work-around solution that facilitates play between a player and the two online casinos both operating off the same licence, when only one account is permitted by law. There is then the issue that both the Licensor and White Label Partner must be willing for their funds to be combined.

The second challenge with implementing a white label solution in Italy is a commercial consideration, and also linked to the fact that only account is permitted per licence holder. If a player is restricted to one account per licence holder, upon the signing of a white label agreement, only new players would be viable new customers at the White Label Partner's casino. Should the player already be registered with the Licensor, they will already have a gaming account and, under law, are not permitted to register another account. If the White Label Partner and Licensor cannot work off the same platform, then the White Label Partner and Licensor must accept that they will be in direct competition with each other for new players.

The third issue with offering white label solutions in the Italian market is linked to the security and responsible gaming measures in Italy. If a player, registered with either the Licensor or White Label Partner, closes their account, they need to wait 15 days before registering a new account. In the instance

where a player, after closing their original account at the Licensor's casino, wishes to play at the White Label Partner's casino, they would need to wait 15 days before opening a new account at the White Label Partner's casino, as the White Label Partner's casino would hold the same licence number as the Licensor's casino. Whilst this is effective from a compliance and responsible gaming point of view, it is commercially unsatisfactory.

Italy...addressing the issues

Italy is quite straightforward with regards to the white label application itself - there is no formal documentation which needs to be submitted to the regulator and there are no restrictions as to the use of software provider (which must be approved by AAMS²). However, there are several compliance requirements which the White Label Partner must abide by concerning the presentation of the website, for instance, the White Label Partner must make it clear that it operates off the Licensor's gaming licence. This means that substantial care must be taken as to the white label design and set-up when implementing the solution.

Whilst theoretically white label agreements are accepted and can be implemented in Italy, there are still practical and commercial issues which inhibit the full business opportunities that historical white labelling can provide.

Denmark...the challenges

The parameters of the operation for a White Label Partner in the Danish market are quite restrictive, since a White Label Partner may

² AAMS notification guidelines can be found at <http://www.aams.gov.it/sites/aams2008/files/DOCUMENTI-NEW/COMUNICATI/CONCESSIONARI/comunicato-canal-gioco-a%20distanza-14-12-2010.pdf>
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only undertake the marketing tasks in connection with the provision of gambling activities.

- The White Label Partner cannot have any influence over the operation of the casino or the gambling accounts.
- The White Label Partner cannot hold ownership of the database of registered players on the system.
- The White Label Partner must not have any relationship with registered players other than in respect of marketing in relation to the gaming.
- The White Label Partner must use the same software provider and any other third party services as the Licensor.

Denmark...addressing the issues

Notwithstanding the aforementioned restrictions, White Label Partners are, however, free to decide the layout of their website, their games, and to decide how the brand is to be marketed. Any activities that the White Label Partner conducts must be in accordance with the various provisions describe in the relevant Danish Gaming Authority guidance relating to these sectors³.

Unlike Italy, the main advantage of offering a white label solution in Denmark is that a player can have a gambling account both with the White Label Partner and the Licensor. This means the players who have already registered with the Licensor will also be viable new customers at the White Label Partner's casino, and provides great opportunities for cross-marketing (providing the Danish

³ Reference to White Labelling can be found at section 5.2 of the Danish Gaming Authority Guideline document for Licence Holders

Advertising Regulations are followed). There is some degree of flexibility as to which actual games and providers the White Label Partner can use – the White Label Partner does not need to offer all the games that are offered by the Licensor, and if the Licensor is using two software providers the Danish Gaming Authority are happy to accept that the White Label Partner only uses one of them.

Spain...the challenges

There is no explicit prohibition for white labelling under the Spanish Gaming Regulations, however, the gaming legislation defines ‘operator’ as a company running a gaming activity which requires a licence to legally operate. Within the parameters of the definition there is no direct provision for white labelling, however, given the operation of any gaming activity requires a licence, the activities which White Label providers are restricted purely to marketing.

Accordingly, a player can have only one account which is registered with the Licensor. The White Label Partner cannot register players, nor maintain an agreement or gaming account with them. The White Label Partner can only provide the ‘look and feel’ of the Licensor’s website. The only documentation that needs to be submitted to the gaming authorities is the affiliate/white label agreement in order to demonstrate that the White Label Partner is an affiliate, and that it does not meet the legal requirements in order to be considered as an operator – should the White Label Partner be considered an operator, it would be required to obtain a licence⁴.

⁴ Article 3 of the Royal Decree 1614/2011 of 14th November, namely article 3.4 expressly excluding obtaining a licence to: “Those companies that exclusively perform an affiliation activity,
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Spain...addressing the issues

Spain is the most restrictive of the newly regulated markets since the historical definition of white labelling falls within the operation of casino activity and therefore would require a separate licence. To offer any type of casino games in Spain requires a licence. The most appropriate agreement in place for a White Label Partner to offer their services in Spain would be under a marketing agreement.

Available options

From a practical standpoint, there are possibilities for a form of white labelling in the regulated markets of Italy, Denmark and Spain. However, the regulatory frameworks of these countries are structured in such a way that the activity of the White Label Partner and Licensee is legislatively and practically restricted. Traditionally, and in other jurisdictions such as Malta, white label agreements have been allowed to provide a greater breadth of activity.



consisting in a promotion activity or by obtaining new clients for the gaming operator, as far as do not register clients or maintain an agreement or gaming account with them (the clients [the users]) do not need to obtain a licence”.

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Notwithstanding the challenges, Italy is by far the most straightforward country when addressing white label solutions. In Denmark, the White Label Partner's activity is restricted to the marketing of a website and its associated games which at least provides good testing ground for the Danish market in the eventual instance of a licence application. To ensure compliance, the white label agreement must be sent for approval by the Danish Gaming Authority.

In Spain, the White Label Partner is expressly excluded from offering any gaming activity under the Spanish legislation. The activity of the White Label Partner is restricted to marketing, in which case a well drafted affiliate agreement should be in place.

Conclusion

White labelling is an innovative and mutually rewarding business arrangement. Ideally, the regulated market legislation should have more express provisions concerning white labelling, and a better commercial understanding of the practical functionalities of white label relationships. This would provide more opportunities to construct a stronger

commercial model, generating revenue for Licensor, the White Label Partner and regulators alike.

It will be interesting to see if any amendments in the current legislative regimes, which may appear in the forthcoming months, address these issues and ensure that white labelling is eventually easier to facilitate.

