

# The KSA shows its teeth

Enforcement of the Betting and Gaming Act by the Dutch Gaming Authority

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**THE primary purpose behind the establishment of the Gaming Authority in April 2012 was to effectively improve the enforcement of the 1964 Betting and Gaming Act.**

There used to be a lack of public enforcement options against unlicensed gaming activities as the only option to enforce the BGA was the draconian application of criminal law. The introduction of the Gaming Authority aimed to close the enforcement gap and the first concrete signs of direct and indirect enforcement vis-à-vis remote gaming operators mainly took place in the first two quarters of 2013.

The Gaming Authority took the view in the first months after its establishment that it was impossible to enforce the BGA against all remote gaming operators active in the Netherlands. It therefore published an enforcement policy based on priorities in June 2012.

This enforcement policy has been established to focus its enforcement measures - in the transitional period up until the regulation of remote gaming - on operators who "manifestly" offer their services into the Netherlands. The Gaming Authority (KSA) announced it will - in principle - not enforce the BGA against those operators who remain passively available on the Dutch market.

The KSA takes the view that operators who (1) refrain from using the Dutch language on their websites, (2) not market their services via radio, TV and print media campaigns and (3) refrain from using the .nl extension in their URLs will not be confronted with enforcement actions. The majority of all remote gaming operators decided to apply the aforementioned criteria to their online offering.

While - in the view of the KSA - the continued offering to Dutch nationals continues to be technically illegal, such operators have ensured compliance with the KSA criteria and therefore face extremely minimal enforcement risks.

Fifteen months passed in which seemingly nothing happened in this area, except for the publication of a press release by the KSA in October 2012 in which it was described that the majority of the remote gaming operators had adjusted their offering to ensure that they did in fact no longer meet the prioritisation criteria.

However, at the beginning of September 2013, the KSA showed its teeth for the first time by imposing the first administrative sanction, i.e. a fine of €100,000, against a



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remote gaming operator that did not adjust its offering and met at least one of the three criteria. The KSA published its sanction decision and actively approached the mainstream media to announce its first enforcement action.

It is unclear what effect such an administrative enforcement measure will have, if any, on a potential future licence application from the said operator. The KSA suggested in the past that administrative measures could lead to exclusion from a future licence application. This has, however, not yet been clarified nor specified by the

KSA and the long-term effects of administrative sanctions remain unknown at this stage.

Another method of the KSA to enforce the BGA is by approaching companies involved in advertising and payment services for the remote gaming sector. The first example of this enforcement strategy took place in February/March 2013 when the KSA requested broadcasters who ran gaming advertisements clearly directed at the Netherlands to refrain from doing so. All broadcasting companies to date seemed to have complied with the requests made by the KSA.

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The Gaming Authority further focused its attention on advertising activities via social media websites such as Facebook and Hyves (a Dutch social media website). The KSA stated it reached an agreement with Facebook in May 2013 to remove gaming advertising directed specifically to Dutch nationals. A similar agreement was reached with Hyves in July 2013.

Early last month press articles appeared concerning potential agreements between the KSA and various financial institutions to block transactions of remote gaming operators.

Firstly, it is unclear how these kind of agreements relate to the aforementioned prioritisation criteria since the financial transaction blocking agreements - at least in theory - may also have an impact on operators who in fact fully comply with the criteria set by the KSA. It appears that the potential consequences have not been thought through in great detail.

More importantly, as noted in the Explanatory Memorandum to the draft Remote Gaming Act, there is no clear legal basis in the BGA at present for any kind of financial transaction blocking, the reason why the Ministry of Justice intends to implement a clear "aiding and abetting" provision in the new gaming legislation.

Is the KSA maybe not trying to show a bit too much teeth here? Watch this space...