



## << *If a regulator decides a new product presents unacceptable risks then it is likely to ban it altogether if the legislation allows...* >>

how they should be licensed. Social gaming products became very popular a few years ago and, following close monitoring of developments and consideration of the risks the Commission published a detailed guidance document in January 2015 to end this period of regulatory uncertainty. The most recent example of this is the proliferation of unregulated websites which have, for some time, been offering skins betting products. As the virtual goods involved can also be bought and sold using virtual or real currency, under UK law they represent money's worth, so this type of website does in fact require a licence from the Gambling Commission.

Regulators are certainly alive to the issues that may be presented by these new gambling products and the British Gambling Commission has recently released a Discussion Paper on virtual currencies, eSports and social gaming. This paper does not definitively set out the Commission's views on all of these products (although notably it does confirm that skins betting where the items have monetary value does require a licence), but seeks to open the discussion and help operators to assess whether they should be applying for a licence.

### **Deciding Whether To Regulate**

The critical question with any new product from a licensing perspective is how the regulator will view it with regard to the licensing objectives (in Great Britain these are: preventing gambling from being a source of / associated with crime and disorder, ensuring gambling is conducted in a fair and open way and protecting children and other vulnerable persons) as well as the precise terms of the legislation.

In broad terms, regulators have three options – ban, licence or allow without regulation. Some jurisdictions have gone down the road of banning new products, for example the Netherlands in relation to skins betting and Australia in relation to in-play betting, both due to concerns about the risks to players.

In Britain, the Commission's Discussion Paper aims to "help operators to avoid providing facilities for gambling without a licence by explaining how the Commission distinguishes between activities that it considers need to be licensed and activities that do not". The Commission tends to avoid banning gambling products altogether, which is consistent with the aim of gambling regulation in Great Britain to permit gambling to the extent consistent with the licensing objectives. An example of this is in-play betting. This is a relatively new product, but one that is now a well established, successful and important offering of many gambling operators. Despite calls from the European Parliament for Member States to ban it due to betting integrity concerns, the

Commission stated in a recent position paper that it did not intend to do so. It therefore seems likely that any new gambling product that can be devised which complies with the legislation and technical standards will be permitted by the Commission, provided it does not raise significant concerns in relation to the licensing objectives

The Commission's thinking on the legal classification of new products will take into account factors such as the potential of harm to vulnerable players including children and those with a tendency to problem gambling, the potential risk to betting integrity and whether the product is fair to those taking part.

If a regulator decides a new product presents unacceptable risks then it is likely to ban it altogether if the legislation allows, although the difficulty here is that those who enjoy that new product may then be driven to unregulated "black market" operators. If it decides to licence the new product, it can impose licence conditions and procedures which must be followed to protect vulnerable groups. On the other hand if the regulator considers the risk to the licensing objectives (for example the risk of harm to vulnerable groups) is very low, it may not think it necessary to licence and regulate the new product at all.

Sometimes the line between these actions can be broad and grey. For example, the Malta Gaming Authority (MGA) has recently set out its position in relation to eSports in a Position Paper in relation to digital games of skill. The MGA's view is that an eSports competition with an entry fee and prizes would not require a licence provided any element of chance does not exercise any significant influence on the final result, not even one of its proposed new skill games licences. The MGA does, however, consider that accepting bets on the outcome of an eSports competition (from those not participating in the competition) does require a gambling licence. The MGA's position appears to be that a player betting on themselves is equivalent to taking part in a competition, so not a licensable activity.

The British Gambling Commission, on the other hand, indicates in its Discussion Paper that a website facilitating players betting on themselves may be a betting intermediary. This does raise a difficult question: is a game played between two opposing players with an entry fee and prize a competition, or are the players placing a bet between themselves on the outcome of the game? How the MGA, Gambling Commission and other regulators deal with this distinction when someone creates a product which tests the boundary will be illuminating.

### **Categorisation of Products**

The second challenge, for the British Commission at least, is a

feature of the Gambling Act 2005. The problem is that while the Act aims to permit all forms of gambling (and to be “future proof”), it breaks licences down by product type: casino, betting or lottery and new products must be slotted into a category in order to obtain a licence. However, many innovative products test the boundaries of the product definitions in the legislation creating uncertainty for the operators as to which licence should be applied for and what restrictions will apply.

Gambling is defined in the 2005 Act as gaming, betting or participating in a lottery and, taking eSports as an example, it must be decided whether this product fits the definition of gaming (“playing a game of chance for a prize”) and/or betting (“making or accepting a bet on the outcome of a race, competition or other event or process, the likelihood of anything occurring or not occurring, or whether anything is or is not true”). The Commission’s Discussion Paper shows that it is being responsive to these issues. Of particular interest, the Discussion Paper indicates that eSports may be gaming in some cases,

especially if they involve events determined by an RNG and/or gaming imagery such as playing cards. In such cases, eSports could only be offered under a casino operating licence. Those already holding such a licence would be well placed for a first mover advantage in hosting online matches and tournaments in a regulated capacity.

The potential to exploit the excitement created by Pokemon Go in a gaming context may also be worth exploring. What licences might be required for a similar game where players pay an entry fee and compete for a prize for the first person to complete a collection of items, found at various locations using augmented reality? This may well fall into the category of gaming if there is an element of chance to discovery of the items, which would mean that it could only be offered to customers in Great Britain under a remote casino operating licence.

#### **Cross Over Between Remote and Land-based Gaming**

As well as dividing products into casino, lottery and betting, the

