

PREDICTIONS FOR 2010

by Julian Harris

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2009 saw the European Court of Justice support national monopolies in the Santa Casa case, but also saw various European jurisdictions take steps towards issuing licences, with Italy and France leading the way. The opening of further European markets is likely to be a key factor for operators in 2010, but this is a lengthy process and we are unlikely to see licences become available in many jurisdictions just yet, but Spain looks a promising bet in the short to medium term. It was hoped that France's new system of gambling regulation would be in force in time for the 2010 football World Cup due to take place this summer. However, recent indications are that this is now unlikely until late 2010, given that a draft bill has not yet been added to the Senate's agenda to be voted upon. Ladbrokes and Belfair continue their long running battle against the Dutch Government, and the result of their ECJ case is eagerly anticipated in 2010. The (non-binding) opinion delivered by Advocate General Bot in December questions De Lotto's right to act as the Netherland's only licensed supplier of online gambling services.

AG Bot does not rule out the operation of a monopoly where it is justified, e.g. to prevent fraud or gambling addiction (as in the Bwin case), but he indicates that it may not be legal for a Member State simply to create a state monopoly without having conducted a competitive tender process open to operators licensed in other Member States. Much centres on the Court's interpretation of the proportionality issue, and the judgment will have important implications for the future of state monopolies in Europe.

In the UK, the Minister for Sport, Gerry Sutcliffe MP, has just announced proposals to change the current system and require all remote gambling operators who wish to advertise or provide services to the UK to obtain a licence from the UK Gambling Commission. There are indications that the changes may include a fast track licensing procedure for those already holding a licence in a European or white listed country, but full details will be revealed in a consultation document to be released shortly. A consultation period will give operators both in the UK and overseas an opportunity to contribute their views on the plans.

Although DCMS focuses on ensuring the same standards apply to all operators targeting the UK market, these proposals were clearly heavily influenced by both by the dwindling number of operators holding UK licences and by the prospect of generating revenues similar to those achieved by the Italian Government through their new licensing system. Ostensibly, the aim of the new system is to secure contributions towards services such as the treatment of problem gamblers. If the 15% tax rate is to be applied to all UK licensees, Government coffers will also benefit, but it may be that this rate is reduced for all licensees. DCMS intends to liaise with HM Treasury in relation to the tax implications of the new system.

However, the proposed changes will require primary legislation, and that means that nothing will happen until we have a new Government after the 2010 General Elections.

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