

BETTING ON LOTTERIES: REDEFINING THE BOUNDARIES

The government is concerned non-UK EuroMillions bets are muddying the “clear blue water” between betting and the National Lottery and risk diverting consumer spend from the latter, so has proposed GC-licensed operators be prohibited from offering them. **Bahar Alaeddini** of Harris Hagan analyses these developments for iGaming Business.

Recent years have seen an increasing overlap in the betting and lottery industries, and concerns have been raised regarding blurred boundaries and consumer confusion. It comes as no surprise that in March, the Department for Culture, Media and Sport (DCMS) announced its plans to prohibit betting on the EuroMillions in its Consultation on Prohibiting Third Party Betting on the Outcome of Non-UK EuroMillions.

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Sometime ago in the September/October 2015 edition of this magazine I wrote a similarly titled article about clutter in the marketplace in relation to lottery-style products. My original article discussed the then recently issued Gambling Commission guidance for operators offering betting on lottery-style products, including EuroMillions draws.

It also explored what the fuss was all about and whether:

- consumers are misunderstanding the product they are playing;
- operators are creating confusion with

their messaging and branding.

The key to understanding what all the fuss is about is to grasp the concept that the two product offerings require different licences, and as a result, trigger very different licensing requirements. It is important to note that lotteries are often viewed as a popular cultural activity with the possibility of winning a life-transforming sum of money. They are viewed by most as being very different to harder forms of gambling, which

is perhaps reflected in the legal age of 16 to play, compared to 18 for betting or gaming.

Betting on lotteries

To recap, offering betting on the outcome of lotteries, except the National Lottery, is legal and is not subject to any of the monetary limits that apply to lotteries. This means that betting on lottery products can be offered for purely commercial gain, unlike lotteries that are reserved for charitable purposes.

Most operators offer betting on foreign lotteries, but they are also able to offer betting on the EuroMillions on the proviso that it is

promoted in another country. This is because section 95 of the Gambling Act 2005 (the Act), which prohibits betting on the National Lottery, only extends to the EuroMillions as promoted by the National Lottery.

DCMS report 2015

This is not the first time the DCMS has looked at the issue of lotteries. In March 2015, DCMS published its report, Society Lotteries, looking at the regulatory framework under which such lotteries operate, and limits on sales and prizes.

As part of the DCMS call for evidence in 2014/2015, Camelot, the operator of the National Lottery, submitted evidence stating that the “innovations” in the market by the Health Lottery, scratch card lotteries and the ability to bet on lotteries were all “causing consumer confusion and clutter in the marketplace”. In its evidence to the DCMS, Camelot suggested three options to clean the muddy blue waters between betting and lotteries:

- prohibiting betting on lotteries either in betting shops or online (including the loophole allowing bets on the non-UK EuroMillions);
- improving clarity on marketing by using the word “bet” in their title and preferably not using “lotto” or “lottery” or similar wording; and
- redefining bets on lotteries as “pure” lotteries.

The DCMS recommended that the Commission research and advise on all three measures suggested by Camelot, to determine which would be most effective in reducing consumer confusion.

Commission guidance

In July 2015, the Commission warned betting-on-lottery operators of the risk that consumers may become confused when betting on lottery-style products, because they believe they are participating in a lottery rather than in betting. Undoubtedly, there is greater potential for confusing consumers, where the products look similar, by offering low stakes and large jackpots, and offering similar branding as lotteries.

Operators are required to use prominent messaging specifying the product on offer at the top of web pages, or messaging on each product to enable consumers to make informed decisions. However, concerns have risen sharply due to the increasing availability and popularity of betting on lotteries online, such as those run by Lottoland, MyLotto and the Health Lottery.

Consultation

In her foreword to the consultation, Tracey Crouch, the Minister for Sport, Tourism and Heritage, stated that: “operators are circumventing [the section 95] restriction... clearly contrary to the spirit and intention of section 95, which seeks to preserve a distinction between betting and the National Lottery. Without further action, we run the risk of further consumer confusion and a potential threat to good cause returns to the National Lottery.”

The government is concerned that non-UK EuroMillions bets are muddying the “clear blue water” between betting and the National Lottery, and that there is a “latent risk” that consumer spend may be diverted from the National Lottery, particularly if betting on the EuroMillions was expanded and offered by more operators. In its consultation, the DCMS stated that there remains a risk that EuroMillions sales and good cause returns may decrease.

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is a lack of available data on the probable impact, preventing a definitive conclusion that EuroMillions sales and good cause returns would decrease. That said the Commission has advised DCMS that it sees this as a potential growth market for operators.

Research conducted in relation to a EuroMillions betting product highlighted that only 14% understood that it was a betting product, whilst 61% thought it was a way of participating in the EuroMillions lottery.

As part of the consultation, the Commission has advised the DCMS that in practice “the distinctions are subtle or technical and therefore capable of being easily lost on the average consumer, for example, small changes in wording from ‘play’ to ‘bet’, particularly where the EuroMillions name is used.” The Commission is concerned that consumers remain at risk of being confused, even if operators are technically compliant from a legal and regulatory perspective.

The document, which must be one of the shortest ever DCMS consultations at 11 pages, relates to the EuroMillions draws only and sets out the UK government’s plans to introduce a licence condition to prohibit operators from offering bets on EuroMillions draws outside the UK. The new licence condition will be implemented under section 78 of the Act and will mirror the existing prohibition set out in section 95 of the Act prohibiting betting on the outcome of the National Lottery, including all EuroMillions draws. The licence condition will apply to a general betting

licence, a pool betting licence and a betting intermediary licence.

The consultation, which includes an interesting question about the proportion of the respondent’s profits that come from EuroMillions betting products, closes at midday on 2 May 2017.

Final thoughts

What is crystal clear, some 18 months on from my original article, is the UK government’s commitment to redefining the boundaries, removing clutter in the marketplace and navigating us to the “clear blue water” again. I am generally a rather unsuccessful bettor; however, it seems a sure bet that the government will introduce its planned licence condition prohibiting betting on non-UK EuroMillions draws. We will have to watch this space to see how a competitive and innovative betting industry responds.



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