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## The European Union and its Impact on State-Licensed Gambling Monopolies

Do gambling monopolies still focus on limiting gambling behaviour or will they lose their status as monopolies?

***Report based on results of a survey of leading market players and on in-depth analysis of the activities of state-licensed monopolies***

Munich/London, July 2004

Executive Summary

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In cooperation with the following legal experts:

**Arendts ■ Anwälte**  
Rechtsanwaltskanzlei  
International Gaming Law

**M**  
**W**  
**VAN MENS EN WISSELINK**  
ATTORNEYS AT LAW - TAX LAWYERS - CIVIL LAW NOTARY

## Summary

The European gambling market is dominated by state-licensed monopolies backed by restrictive national legislation. But monopolies and restrictive national laws have sooner or later always drawn the European Union (EU) and its desire for a common EU market onto the scene. For a long time one of the last monopolistic industries within the EU – the gambling industry – prevailed over all criticism in Luxembourg and Brussels.

But now these state-licensed gambling monopolies are starting to unravel and Europe might experience a far-reaching liberalisation of its gambling market. All this because the European Court of Justice (ECJ) decided late in 2003 that the prohibition imposed by Italian legislation on a betting service offered by a UK-based bookmaker is a restriction of the freedom of establishment and the freedom to provide services across the EU. But the ECJ also stated that these restrictions may be legitimate if they reflect an overriding purpose of general national interest, such as reducing gambling opportunities, preventing fraud or the preservation of the social order. Although some private gambling operators may already have started to toast unified European gambling, the ECJ decision is only a first step in a probably long drawn out process of determining the legitimacy of state-licensed gambling monopolies.

Since this ECJ decision, all Europe is having a closer look at its gambling-related legislation and especially at the strategies of the respective monopolies. All strategies are under close observation and now routinely challenged in national courts to determine if they really focus on reducing gambling opportunities or similar general interests. If it is proven that this is not the case and that state-licensed monopolies instead essentially focus on increasing their turnover/profits, the monopolies will be seriously threatened. The following statements summarise the situation:

- 1. International expansion is the top priority for management, especially of Austrian and British private betting operators.**
  - Only 24% of the companies surveyed are not interested in a pan-European expansion.
  - For 91% of the companies national regulations represent the biggest obstacles.
  - Stanleybet, Ladbrokes and other private gambling operators already have substantial foreign operations.
- 2. Increasing liberalisation poses a real threat to the existence of state-run betting and lottery companies.**
  - Only very few state-licensed operators yet have the experience and know-how to compete against gambling “heavyweights” such as William Hill or Betfair.
  - Some monopolies have already begun to accept the fact that the EU gambling market will soon be unified and are more or less secretly preparing for it.
- 3. The most recent court decisions of the ECJ and national courts tend toward increased liberalisation of the European betting and lottery market.**
  - The ECJ has left it to the national courts to examine and decide if channelling the gambling operation has taken a backseat to the turnover/profit motif in the respective state-licensed monopolies and if, as a result, they have lost their claim to a monopoly.
  - In recent weeks, national court decisions that support a liberalisation of the gambling market (e.g., the decision in Arnhem or the German Federal Court of Justice decision) have increased in number.
- 4. In the coming months detailed analyses will be conducted to examine the legitimacy of the state monopolies.**
  - To test the true focus of the state-licensed monopolies, some national courts will now have to examine the behaviour of the respective monopolies in detail.
  - The outcome of this examination is by no means certain at this point in time and in the coming months it should be possible to observe a bitter “confrontation over one of the last monopolies in the EU” (head of a state-licensed monopoly).
- 5. State-licensed betting and lottery monopolies act in some respects – but not in all – much like ordinary private businesses and, thus, are in contradiction to their original mandate.**
  - Regarding the EU as a whole, only 23% of the companies surveyed consider the monopolies as focusing on limiting gambling activities.
  - According to our observations, most state-licensed lotteries and betting operators regularly post growing turnover and profit figures. However, this fact alone does not prove that state-licensed monopolies actively encourage gambling activities.

- Advertising by monopolies is only legitimate if it prevents the migration of customers to illegal offers. The pure size of the monopolies' advertising budgets has always been a key argument of private operators in their claims that state-authorized lotteries are trying to exploit the market. In our view this argument is not convincing by itself.
- iTV and mobile on the other hand are clear evidence of a market expansion strategy because there is no legitimate reason for monopolies to offer them.
- If mission statements say anything about an organisation's core beliefs and values, the state-licensed operators ultimately seem to have only a marginal interest in containing gambling.

**6. In order to avoid risking a complete dissolution of monopolistic structures, the state-authorized companies will have to modify or perhaps discontinue some products, sales channels, and/or marketing campaigns.**

- Many activities that at first glance look like pure market expansion are indeed necessary reactions by the monopolies to keep illegal offers from filling a demand in their respective population.
- However, nearly all state-licensed monopolies have gone too far in some respect and allowed the profit/turnover-orientation to predominate over their key objective of limiting and controlling gambling.
- Preventing fraud and safeguarding the social order can also be achieved with foreign/private offers and thus cannot serve as arguments for market restrictions. This "bogus" argument therefore should have a negligible relevance in the discussion of the legitimacy of monopolistic structures.

**7. Next steps**

- The EC and other EU institutions have already started and will continue to drive the liberalisation process. Only 9% of the companies surveyed believe that the EC will "*not change/do anything*".
- The state-licensed monopolies will review and possibly change their strategies in order to comply with EU law and maintain the comfortable monopolistic structures.

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## Contact



MECN  
Media & Entertainment Consulting Network GmbH  
Martin Oelbermann  
Kaulbachstrasse 35  
80539 Munich  
Germany

Tel: + 49 (0)89 3835 6785

Fax: + 49 (0)89 3835 6786

Mobile: + 49 (0)177 5858 666

E-mail: [martin.oelbermann@mecn.net](mailto:martin.oelbermann@mecn.net)

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**Contact us:**

For questions, please contact [reports@mecn.net](mailto:reports@mecn.net)

**London / UK**  
 MECN GmbH  
 155 Regents Park Road  
 London NW1 8BB  
 United Kingdom

**Munich / Germany**  
 MECN GmbH  
 Kaulbachstrasse 35  
 80539 Munich  
 Germany

Tel.: +44 (0) 870 432 5490  
 Fax.: +44 (0) 870 432 5491  
[info-uk@mecn.net](mailto:info-uk@mecn.net)

Tel.: +49 (0) 89 7412 0235  
 Fax.: +49 (0) 89 7412 0102  
[info-germany@mecn.net](mailto:info-germany@mecn.net)