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The logo for BOS.nu, featuring the text "BOS.nu" in a white, sans-serif font on a dark grey rectangular background.

Reply to the PM "Revised proposals for a strengthened gambler protection following the spread of covid-19"

The Swedish Trade Association for Online Gambling (BOS) hereby submits its opinion regarding the revised PM published by the Ministry of Finance. BOS has already submitted a statement over the Government's first proposal. BOS' first statement still stands, and the following reply should be seen as complementary to that.

The justification for the provisions

BOS starts by noting that the stated motive for the suggested provisions in the initial proposal was altered consumer behaviour due to the covid-19-crisis. Later, the altered consumer behaviours apparently only applied to online casino, which is why the subsequent proposal only applies to the latter gambling vertical.

The Ministry of Finance has had obvious difficulties proving that online casino activity actually increased during the covid-19-crisis. The Ministry of Finance has not been able to support this claim with any evidence whatsoever. Instead, other statistics not directly related to changed consumer behaviour in online casino have been presented, at best serving as indices of changed behaviour, not proof thereof.

Between the Ministry of Finance's first and second memorandum, the Swedish Gambling Authority communicated in an email to the Ministry of Finance that they do not see an increase in online casino activity. The Swedish Gambling Authority stated that this does not necessarily mean that an increase will not occur, but from the data the authority has it is not possible to reach such conclusion.

Parallely, BOS members have not witnessed a drastic change in behaviour regarding online casino. For BOS members, the most notable difference is found in another gambling vertical: sports betting that due to cancelled games have seen a notable decline. Other betting companies outside of BOS – including state-owned Svenska Spel

– claim that online casino activity has been standing still while there is a hefty decline in sports betting.

The email conversation that the Ministry of Finance have had with the Swedish Gambling Authority shows that the Ministry of Finance *beforehand* seem to have decided about certain changes in behaviours in the gambling collective/community and formed their proposal for regulation out of this opinion.

Gathering facts

BOS advocates that the Ministry of Finance gather information about the reality *before* measures are taken. We do not consider it to be the gambling market's responsibility to provide authorities with basic facts. This should be done by the authorities themselves. We suggest, notwithstanding the proposal in the Ministry's' revised memorandum, that the Ministry of Finance assigns the Swedish Gambling Authority to, during the Covid-19-crisis, measure the developments of the gambling markets with increased intensity as follows:

1. Monthly reporting on the developments of the gambling verticals for which Swedish gaming licenses can be obtained.
2. Quarterly reporting of the channelisation on each gambling vertical level, i.e. that gambling verticals such as online casino and horse gambling are reported separately.

Without facts, the Government are in the risk of making decisions that have no connection to reality, decisions that might cause irreversible damage to the Swedish gambling regulation.

Decisions that are not anchored in reality cause harm to the gambling regulation. This is exactly what will happen is the Government makes decisions in accordance with the revised proposal of the memorandum. One example on irreversible damage is that gamblers who leave the licensed gambling system to gamble outside of the Swedish licensing system due to the temporary regulation will be lost even after the expiry of the regulation. So far there has been no increase in online casino activity and that the proposed measures will have a negative impact on an already alarmingly low casino channelisation rate.

Channelisation

Prior to the Ministry of Finance's first memorandum, BOS presented a channelisation estimate for the Swedish gambling market conducted by the independent analysis firm Copenhagen Economics¹. The estimates were in line with the developments that could

¹ https://www.bos.nu/wp-content/uploads/2020/05/Final_sv_BOS_27april_v2.pdf

be expected from the estimates presented by the Swedish Gambling Authority in 2019. Copenhagen Economics presented a falling channelisation rate for the competitive gambling market with an estimated channelisation rate of 80-85 %. As the only actor to present channelisation broken down into different gambling verticals Copenhagen Economics was able to show dramatic differences between different gambling verticals, in which gambling on horse racing constitutes one extreme with 98 % channelisation and online casino with approximately 75 % channelisation constitutes the other extreme.

In this situation it is irresponsible to suggest measures that will have obvious negative effects on the online casino channelisation.

This fact appears in an even clearer light when taking the tax numbers Skatteverket recently presented for the Covid-19-crisis into account. Skatteverket was able to show a stagnation or negative development for gambling companies offering sports gambling and online casino, while the dominating gambling company in horse betting showed a dramatic increase in turnover exceeding 30 %, which represents the largest increase for any individual gambling company and any individual gambling vertical since the Swedish re-regulation of the gambling market.

To, in this situation, propose austerity measures for online casino and, as in this case, an exception for horse betting appears to reckless and incomprehensible from a consumer protection perspective.

Consumer changes on the gambling market

Covid-19 appears to be a lengthy crisis. We do not know if we have seen the worse consequences yet. The crisis effects on the gambling market as well as the labour market can reach their respective crescendos at a different time than of the disease outbreak itself. On the gambling market we can see that European sport leagues are restarted one by one, and that professional sport in Sweden has been given a green light to restart on June 14. These types of societal changes are likely to have an impact on the gambling market, and the changes are happening fast. There will be new conditions on July 2, when the Ministry of Finance's memorandum is purposed to be applied, than those currently prevailing. One obvious difference is the return of sports betting.

Therefore, we propose that the Government gives the Swedish Gambling Authority the task to, in addition to estimating the gambling market in accordance within this referral previously mentioned, gather the actors on the gambling market at reconciliation meetings at the authority on a regular. This as a special measure during the covid-19 crisis. Further changes in consumer behaviour cannot be ruled out, and with facts as a base and dialogue as a strategy the conditions become considerably better if changes are needed. Such council should consist of important actors from the gambling industry, for

example, the gambling companies' industry organisations, scholars/researchers and gambling addiction organisations.

European law

In its first proposal, the Government referred to changes in consumer behaviour that so far have been absent. This is important from an EU legal perspective. The Government has not been able to show that their statement was correct. This circumstance is serious as the Government invoked the EU's regulatory framework for urgent procedure as a reason why not use the usual three month long "stand still-period".

BOS wishes to emphasise that for the second memorandum, with its obviously distortive consequences for competition and, to say the least, lack of factual support for the proposed measures, it is of utmost importance that the Government conduct a normal notification to the European Commission.

In the original invocation of an urgent procedure to the European commission, the Government states that "if there is a risk that the deduced supply of land-based gambling and betting objects [...] means that consumers increasingly seek more risky forms of gambling such as online casino". Firstly, the Government has not stated anything that supports its claim of risky forms of gambling. Secondly, this effect expected by the Government have not occurred. Thirdly, the reduced supply of sport gambling and land-based gambling are expected to have returned to a large extent by the date when the regulation will be applied; on July 2. For example, Allvenskan is expected to start on June 14, La Liga on June 8, Premier League on June 17 and Bundesliga that started already on the May 16.

It stands without reasonable doubt that there is no basis for an urgent procedure. Such a procedure would be a violation of EU law by Sweden. Sweden is obliged to notify whether proposals are undergoing significant changes, which the revised memorandum to a great extent does.

Technical implementation

Another reason for giving changes a sufficient time frame before they become operational are the technical consequences the changes entail for the gambling companies. The new proposals, where gambling on sports is separated from online casinos, leads to further technical complications for the gambling companies. The gambling companies are, by Swedish law and regulations, required to test their systems under the supervision and certification of appointed certification bodies. Changes in the dignity of what is proposed in the memorandum take months to implement for a gambling company that strictly adheres to and lives up to Swedish law and regulations.

It cannot be regarded as responsible by the Ministry of Finance to propose changes that, in reality, require deviations from the Swedish gambling regulation.

Competition law

The proposed measures have an obvious impact, to the extent that they particularly harm private gambling companies and, conversely, that they promote state-owned and/or state-controlled gambling companies. Online casino is certainly a gambling vertical offered by the both state-controlled gambling companies, AB Svenska Spel and ATG, but it is not a dominant product for them. Their dominant gambling verticals are, for example, lotteries and horse gambling, which are completely excluded from the regulations. The proposal has a very negative impact on the possibility of maintaining a gambling market characterised by competition-neutral conditions, which was the Riksdag's intention in the adoption of the new gambling legislation.

The future of the gambling license system

Lastly, BOS have once again turned to Copenhagen Economics and this time asked what the channelisation would be if the Government take a decision in accordance with the submitted proposals. The result is a channelisation of 52-63 % for online casino.

This is a level of channelisation that Sweden has not had since the re-regulation of the Swedish gambling market. The very low degree of channelisation before the re-regulation was, together with threats from the EU Commission on breach of treaty, the two main reasons why Sweden re-regulated its gambling market. If the Government goes ahead with its proposals, we are back to square one regarding channelisation.

From BOS side we, already at this stage, want to highlight that when the need to once again re-regulate the Swedish gambling market becomes obvious, there is a long way to go before we will reach the spirit of mutual respect and willingness to compromise that characterised the previous reform.

The Government should, under all circumstances, prepare for the probable increase in problem gamblers that Sweden can expect when the gambling collective due to the extent of the proposed regulation increasingly turns to the unlicensed gambling market.

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