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The logo for BOS.nu, featuring the letters 'BOS' in a large, bold, white sans-serif font, followed by '.nu' in a smaller, white sans-serif font. The logo is set against a dark grey rectangular background.

Consultation response, Fi2021 / 00300, Increased protection and strengthened regulation in the re-regulated gaming market

The industry association for online games (BOS) submits this letter with its response to the above-mentioned investigation. BOS is an industry association with just over twenty members, of which about three quarters are licensed gaming operators (business to consumer) and the remainder game developers (business to business).

The first part of our consultation response constitutes general observations on the Gambling Market Inquiry's way of relating to its investigative material - the Gambling Market - and the second part of our response delves into selected chapters and proposals from the report.

1. General observations

BOS was out very early and advocated a Swedish licensing model for gambling. We still believe that a national licensing system is so far the only functional way to regulate gambling. The only tried alternative to licenses so far, monopoly, does not meet the needs of either gaming consumers, gaming companies, the state and others. Stakeholders in the gaming market have.

The main expression of this was the inability of the monopoly system to attract gaming consumers to the gaming market then designated by the state: the monopoly. Less than half of the games that were later re-regulated eventually took place on the designated gaming market in Sweden before the re-regulation. More than half of the game took place beyond Swedish control.¹

¹ "In 2018, 47 percent of Swedes' online gambling and betting took place with players licensed in Sweden." Government Offices, Evaluation of the re-regulation of the gaming market, interim report 2 ", p. 8. <https://www.statkontoret.se/globalassets/publikationer/2019/201906.pdf>

The Scandinavian countries have chosen different strategies for regulating their gaming markets. Denmark already re-regulated in favor of a licensing system in 2012 and has succeeded very well in attracting its gaming consumers to its gaming licensing system; 92 percent of Danes take care of their gambling there. Norway, still stuck in a monopoly structure, only manages to attract 45 percent of its player collective to the nationally regulated gaming market.²

For the Swedish part, it goes like this. From a level corresponding to the high Danish during the Swedish gaming license system's first half year, the so-called channeling (the proportion of players within and outside the national gaming regulation) has gradually declined. The Gaming Inspectorate has estimated the channeling to be between 85-87 percent (autumn 2019), while Copenhagen Economics has estimated it to be 81-85 percent (spring 2020) and still declining.³ The state's goal is for the channeling on 1 January 2022 to be at least 90 percent.

However, these channeling estimates do not say much about the state of the gaming market, since the gaming products included in the overall channeling estimate show such different degrees of channeling between them. Horse betting has a proven high degree of channeling with only a few percentage points from being completely channeled. This should be compared with online casinos whose continued existence within the licensing system with its strained low degree of channeling between 72-78 percent is seriously threatened.

A recurring problem with the Gambling Market Inquiry's report is that the Inquiry does not seem to have embraced this reality to any great extent. On the contrary, the inquiry protects those gaming verticals that already have a high degree of channeling from additional restrictions, while verticals that already suffer from low channeling are proposed to have additional restrictions. This is despite the fact that the connection between restrictions and declining channeling is rather undisputed.

It may be appropriate to recall why it is important to have a high degree of channeling. Channeling is not a consumer protection measure per se, nor is it a tax revenue or other regulatory measure. But, and this is what is so important, all regulatory measures aimed at a high level of consumer protection and other results desired by the state, including tax revenues, presuppose that players are channeled into the state-designated gaming market. That is what is being wasted in this now, p.g.a. that neither the inquiry nor the government seems to be able to adopt the basic conditions for a successful licensing system.

² <https://www.spelinspektionen.se/om-oss/statistik/statistiknytt/danmark-bast-i-norden-pa-att-reglera-spel-pa-internet/>

³ <https://www.svd.se/olagligt-spelande-pa-natet-allt-vanligare>

The most basic condition for a regulation of online gambling is that neither the state nor the gaming companies decide whether the regulation will be successful or not. It off-makes consumers. The state must accept that the gaming companies within the licensing system are granted the opportunity to offer gaming consumers gaming experiences that are perceived as at least as attractive as their counterparts outside the gaming licensing system, ie in the gaming market that is sometimes referred to as black and gray. An offer outside the gaming license system is never further away than a few keystrokes on your phone or computer.

It is at this central point that the inquiry is too careless. Without this insight, it will be difficult to come up with proposals that strengthen Swedish gambling regulation in general or consumer protection in particular. The lack of insight is that it is quite possible to achieve a significant degree of consumer protection as well as significant tax revenue without losing significantly in channeling, but that the state must refrain from adding so many restrictions that channeling falls below the 90% target.

In the long run, the entire Swedish gaming license system is threatened if the channeling is not shown greater care. And much earlier than in the face of the complete fact that another gaming policy regulation has crashed, every day a large proportion of the Swedish player collective loses out on the benefits of gaming within the licensing system, not least in terms of strong consumer protection. For this, the inquiry, in its lack of insight, bears a certain responsibility, let alone that the main responsibility lies with the government.

2. Conclusions of the report

In chapter two below, we comment on reasoning and proposals that are directly taken from the Gambling Market Inquiry's report.

2.1. Svenska Spel's adaptation after the reregulation

The Gaming Market Inquiry finds that in addition to Svenska Spel, there are another approximately seventy licensed companies in the competitive gaming market. However, this circumstance does not lead to any reasoning as to the suitability of operating in such a market with a State-owned company. What exactly is the state's role as a commercial player in the gaming market? What can the state contribute as a commercial player that none of the other seventy competitors succeeds with?

The state's operations are of course divided into different areas of responsibility. The supervisory part is not the same as the commercial company part. Nevertheless, it is difficult to free oneself from the fact that parts of the state sometimes find it difficult

to keep these parts apart, and that the commercial company part is thus given advantages over other gaming companies. A current example is when the Riksdag's Social Affairs Committee in the autumn of 2019 arranged a seminar on gambling addiction. Only representatives funded by Svenska Spel were invited. No other gaming companies were represented, nor were expert authorities such as the Swedish Gaming Inspectorate or the Swedish Public Health Agency.

What has happened shows the state's difficulty in relating neutrally to the state's own business activities, which are instead often assigned the role of authority and free from commercial interests. And it is not unreasonable to imagine that Svenska Spel's owners may be tempted to make decisions or at least listen a little more to their own gaming company than any of the other seventy companies on the market.

We believe that the state's unique role is to enact laws and, through its authorities, monitor that gaming companies comply with the regulations and impose sanctions on those who violate these laws and regulations. It is not a small or unimportant function, and unfortunately it is sunk by the state's dual roles in the gaming market.

Svenska Spel is a very resourceful company, in Sweden more resourceful than all its competitors, and significantly more resourceful than the political parties. This creates a bias when the company actively forms opinions towards politicians and others about how the gaming market should be regulated. It has become more common for Svenska Spel to tell its owners as well as political representatives in general about how the gaming market should be regulated, than what would be normal in a democracy: that it is the Riksdag and the government that tell Svenska Spel what the company has to comply. This distortion in the gaming market will never be rectified unless Svenska Spel's competitive part is sold.

In a report to the Swedish Competition Authority, BOS also pointed out the unreasonableness of Svenska Spel confusing its operations and brands between the monopoly-protected business and the competitive one.⁴ Maybe this cross-subsidization is a violation of competition law in the formal sense (we mean it), maybe not. However, the Gambling Market Inquiry had the chance, without taking it, in addition to trying what is strictly legal, also asking itself what is appropriate. That question leaves the inquiry unanswered.

2.2. The financing of the sports movement after the reregulation

BOS shares the inquiry's conclusion that it is not relevant to present any alternative and for the gaming companies a mandatory financing model for the sports movement.

⁴ <https://www.bos.nu/2019/02/13/bos-inger-klagan-pa-svenska-spel-hos-konkurrensverket/>

The model presented here, above all by the sports movement, does not differ significantly from the model presented in the horse context by ATG and its owner organizations, and which has been awarded a special report: Fi2021 / 00299, Hästnäringen's financing of the re-regulated gaming market. In our separate opinion on that report, we present the basic objections to so-called market fees set by the state. Those objections are the same when it comes to other sports, which is why we mainly refer to that opinion.

Specifically regarding market fees for sporting events, we would like to mention information on the distribution between games on foreign and Swedish match events by Swedish gaming consumers. A gaming company that is a member of BOS and in this context wishes to remain anonymous and has a significant market share in the Swedish sports betting market states that only 5.96 percent of their Swedish customer base comprises Swedish sporting events (defined as a sporting event on Swedish soil). Another anonymous company, also the member of BOS, provides the following statistics:

Foreign games

As a proportion of contributions 89% (91%)

As a share of gross win, i.e. after winnings are paid out to players 92% (95%)

As a percentage of bets placed 83% (87%)

The number in parentheses refers to foreign sports betting minus betting on horses.

The conclusion is thus that Swedish gaming consumers to a very large extent prefer to bet on sporting events on foreign gaming objects. If Sweden is not to pursue a protectionist policy in this area, the lion's share of the funds raised for a mandatory market fee will probably need to be transferred to foreign sports bodies. The state has, through its own gaming company, Svenska Spel, for decades offered games on foreign gaming objects - not least English club football - without transferring a single krona to the athletes concerned.

2.3. Measures to exclude unlicensed gambling

BOS welcomes the inquiry's proposal to introduce so-called B2B licenses, i.e. that it will be subject to a license obligation to provide B2C gaming companies with gaming software. We believe that this will be an effective requirement that will help defend the channeling and the Swedish licensing system. BOS also wants to emphasize right now that how the requirements in these licenses are formulated is crucial for the success of the reform, and that we assume that the industry is given good opportunities for early influence in the development of the regulations.

A serious shortcoming in the fight against unlicensed gambling is the actual application clause regarding unlicensed gambling in the Gaming Act as it was decided by the Riksdag. The Gaming License Inquiry recommended in SOU2017: 30 A re-regulated gaming market a license obligation for business to consumer companies for those who "enable participation from persons who are resident or permanently staying here [in Sweden]". This was later changed in the government's bill to "Online games that are not aimed at the Swedish market shall not be considered provided in Sweden". This shift in application has made it possible for unlicensed gaming companies to still target Swedish gaming consumers, but in an indirect way via the euro currency and the use of the English language. By using these foreign measures, the application is rounded off and the company is protected from interventions by Swedish law enforcement authorities. In that case, the English language and the euro currency are hardly seen as a major obstacle for many Swedes, leaving the procedure a serious opening for unlicensed but potentially legal play.

We have drawn attention to this shortcoming in the law in a letter to the Gambling Market Inquiry on November 17th, 2020, but have not noted in the Inquiry's report that it has taken greater notice of the allegations.

2.4. Measures to reduce the harmful effects of gambling

2.4.1. Risk classification of games

BOS believes that the main method for preventing and counteracting gambling addiction is to risk classify players rather than games. The bottom line is that players with a tendency to risky behavior will injure themselves regardless of the game product. It is also based on the fact that although it can be emphasized that different gaming products can have different degrees of danger, there are no harmless gaming products.

Risk classification has, as has been suggested so far, had two effects. One is to exclude allegedly less dangerous games from consumer protection, which we believe should apply to the gaming market's product range in general. The second effect is to specifically point out the online casino gaming product as particularly dangerous. In fact, pointing out online casinos is so quick for both the inquiry and the government that they do not even wait for the outcome of the proposed risk classification.

There is every reason to suspect that the results of the risk classifications will be used to primarily impose additional restrictions on the online casino gaming product. These restrictions will not strengthen consumer protection, but on the contrary drive the player collective to an even greater extent away from the licensing market. Let us remind you that online casinos already today have a degree of channeling that is low

and far from long-term sustainable. As things stand now, therefore, any temptation to resort to restrictions that further impair channeling must be stopped, in the name of consumer protection. We believe that it may not be relevant with any risk classification of gaming products before the state delivers on its established channeling goal, for which the development is currently going in a declining direction.

Online casino is certainly not harmless, but has linked to the opportunities for consumer protection that are so characteristic of online gaming. Customer awareness is good, no game is anonymous. Cash is prohibited, all transfers are traceable. Yes, not only the transfers but the player's overall behavior is completely mapped in that every keystroke on the phone or computer is monitored. It creates unique opportunities to offer a safe and secure gaming environment - also for reasons other than consumer policy, such as law enforcement money laundering - far safer than land-based anonymous gambling for cash.

2.4.2. Additional marketing restrictions

The inquiry proposes a ban on the marketing of online casinos on radio, television and streamed media between 06-21. This is a proposal that BOS strongly opposes.

The proposal is a strong intervention in commercial freedom of expression and freedom of trade. It specifically targets the gaming product where the state as a commercial player does not have such a large market share, and correspondingly protects areas where whole or semi-state players have their most important market. The proposal thus raises questions about whether the state acts for Sweden's best or for its state-controlled and / or owned gaming companies.

The proposal drives the player collective out of the license market. It seems unclear how the Swedish-licensed online casino companies will be able to contribute to a strong channeling if they are not even allowed to tell about their existence in relation to the unlicensed companies. The proposal is therefore very detrimental to Swedish consumer protection with regard to online casinos.

A competition law issue that arises is whether gaming companies that have a common brand for various gaming products - such as lotteries, sports games and online casinos - should be allowed to engage in general brand marketing of the company and its activities, such as sponsorship of non-profit activities. Such marketing naturally creates brand awareness and drives consumption not only to lotteries or sports games but also to these companies' online casino games. It appears to be extremely dubious from a competition law perspective to allow full-range gaming companies (often with monopoly-protected gaming products) to engage in brand marketing even during the

day on radio, television and streaming media, while gaming companies that only offer online casinos are prohibited from do the same.

Finally, one can of course ask oneself to what extent tabled radio and television meet the consumer group the inquiry says it wants to protect. Advertising investments in these media have fallen dramatically in recent years, a development that has taken place exclusively for market reasons.⁵ Tablet media is increasingly reaching people. The desire expressed by the government for a reduction in advertising volume on radio and television has already been achieved, without the state having to introduce any anti-competitive or market-inhibiting measures for this purpose.

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⁵ <https://www.spelinspektionen.se/om-oss/statistik/statistiknytt/spelbolagens-kop-av-spelreklam-i-traditionell-media-minskade-22--2019-jamfort-med-2018/>