

2021-09-29

Ministry of Finance

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 / 02357, Particular moderation in marketing games to consumers

In the memorandum “Special moderation in marketing games to consumers”, the Government proposes that the requirement that marketing of games should be characterized by *moderation* be changed to *special moderation*.

The Swedish Trade Association for Online Gambling (BOS) rejects the proposal.

About BOS

BOS brings together about twenty online gaming companies operating in Sweden. The companies are active in the competitive Swedish gaming market. They are independent of the state in the sense of ownership, principal and board composition. All members have a Swedish gaming license for such activities that are subject to a license. BOS works for a healthy and sustainable gaming market which i.a. is characterized by consumer protection, a clear correlation between the state's role in the gaming market and commercial gaming companies' ditto and a high channeling into the Swedish licensing system. BOS places special demands on its members' marketing in addition to what is stipulated in Swedish law.¹

The Function of Marketing

In addition to the individual gaming companies' individual needs to gain market share, marketing plays a central role in maintaining the Swedish licensing system. Although marketing is far from the only component in the maintenance and defense of the licensing system, its role should not be underestimated.

The central role of marketing is to channel gaming consumers into the Swedish licensing system. The idea is that consumers, by being informed about the existence of

¹ <https://www.bos.nu/wp-content/uploads/2020/08/Svenska-spelbranschens-riktlinjer-för-marknadsföring-april-2020.pdf>

the licensed gaming companies and their products, should choose these and not gaming experiences from unlicensed players in Sweden. The reason why it is important that gambling for money takes place on the designated license market is i.a. that only there do Swedish legislators and authorities have command of consumer protection.

Channelization

The state has a goal that the channeling in the Swedish gaming market should amount to at least 90 percent as of January 1, 2022. It is a goal that is very close in time, but which in goal fulfillment appears remote. In its latest report on developments in the gaming market, the State Treasury points to a number of worrying results.² The first observation is that the most recently estimated channeling is 85 percent and thus below the target of 90 percent. The second observation is that the channeling appears to be continuing to decline. The third observation is that channeling is significantly worse within individual product categories. Online casinos have the worst channeling with an estimated 75 percent. BOS can not come to any other conclusion than that the government's both formal and public opinion outcomes against this form of gambling since the Swedish re-regulation in 2019 is reflected in the catastrophically low channeling of online casinos today. With every fourth gaming crown leaking out of the licensing system, at the same time the very legitimacy of this system leaks out the same way.

The consumer protection that was the actual portal clause for Swedish re-regulation has now largely been wasted. This is because we know that among the lost 25 percent in sales there is an over-representation of high-volume players. Although being a high-volume player is not the same as being a high-risk player, high-volume players are a particularly protected consumer group, which the government seems to have chosen to neglect. This group is only to a small extent left in the Swedish licensing system nowadays. All that remains are the groups that play on a small and medium scale and for whose sake Swedish consumer protection nevertheless of course also plays a role, but not in the often decisive way that it would do if Sweden lived up to its channeling goal and thus also reached high volume players. This circumstance is the biggest betrayal and the biggest failure on the part of the government with regard to gambling regulation.

² <https://www.statskontoret.se/publicerat/publikationer/2021/utvardering-av-omregleringen-av-spelmarknaden--delrapport-4-andra-aret-med-den-nya-spelregleringen/>

The scope of the gaming advertisement

The year before the Swedish re-regulation of the gaming market and its first year of operation was characterized by a very extensive gaming marketing, i.e. period 2018-19. Too extensive, in most people's opinion. We as an industry organization agree with this view, let alone that measures aimed at limiting the volume of gambling advertising rarely or never reach the requirements we place on the design of rules regarding commercial freedom of expression, competitive neutrality and obstacles to cartel formation. Perhaps more could have been done during these two turbulent years of the industry in order to avoid the aggression that many rightly experienced characterized the gaming industry then. At the same time, we can state that the authorities, thanks to the licensing system, received new and effective measures to take against gaming companies that violated the regulations, in some cases to the extent that the gaming license was revoked.³

What happened next was that gaming advertising was greatly reduced, measured in advertising investments in traditional media. It was halved and has since what seems to have stabilized to the level that applied before the Swedish reregulation (with the reservation that it is still too early to draw any definitive conclusions).⁴ The aggression that was there a couple of years ago no longer exists, and it seems unlikely that it will return. It is connected with the inherent logic that follows from a re-regulation. Going from a monopoly with a very limited number of players to a licensed market with almost one hundred players comes with a price, and that price is an annoyingly high advertising intensity during the first period of the reform, before market shares have stabilized, consolidation has reduced the number of players and sharp marketing budgets for fortune seekers have been emptied.

Due to the above, it appears unclear what kind of problem the government considers it needs to address.

What does the proposal really mean?

We note that the government has not yet succeeded in communicating what the proposal concretely means for the many forms of expression that marketing has today. What does this mean for outdoor advertising? For telephone sales? For advertising in kiosks and shops? For direct mailed mailings? For advertising in, for example, the daily press?

We believe that a basic requirement for legislative amendments of this kind is that the proposer, i.e. the government, at least itself, has an indicative view of what the

³ <https://www.spelinspektionen.se/press/nyhetsarkiv/spelinspektionen-aterkallar-safeents-licenser/>

⁴ <https://www.statskontoret.se/globalassets/publikationer/2021/2021-5-webb.pdf> s. 69

proposal entails and a willingness and ability to communicate this in advance. We experience that not even the members of the Riksdag's Culture Committee, when asked directly by the responsible Minister, could get an answer to what a change in the law according to what the government is now proposing would mean.

Equally carelessly handled are the impact descriptions of the effects for channeling as well as the effects for the recipients of the gaming companies' marketing investments, primarily the media house and the sports movement. With regard to media that conduct editorial journalistic work, our preliminary estimates show a loss of revenue that may include a couple of hundred million kronor with the proposed transition from moderation to special moderation, and not zero kronor as the government claims. We urge the government to pay close attention to the consultation responses submitted by media houses and their industry representatives. It cannot be the intention of the Swedish people to deny Swedish independent quality journalism such a decisive source of income, without offering a financial compensation that fully covers the losses.

The same applies to the sports movement, which, thanks to sponsorship agreements, receives multi-million sums from gaming companies, in some cases multi-billion sums.⁵

What is the government's plan to compensate for sports and investigative journalism if the proposal is implemented? How should independence from the state be secured with such a compensatory measure which, by its nature, is state-owned?

Political support

The Swedish reregulation became such an initial success - with initially upwards of 95 percent channeling - thanks to the government then gaining a broad political foothold, not least a broad party political anchorage. In the years that have passed since then, the government has almost managed to destroy every trace of that anchoring. The proposal now presented is no exception but is non-existent in the Riksdag and among its members. It is deeply regrettable that the government seems to value its own short-term gains in the gaming policy debate higher than to work for a long-term sustainable gaming market. The latter presupposes at least a solid anchoring work among the Riksdag parties before proposals are presented, but probably also among other societal actors with interests in the gaming market.

The government has not nurtured these relations, but on the contrary acted as what seemed to be an agent for certain players in the gaming market. The "temporary" game restrictions since the spring of 2020 m.a.a. The covid 19 pandemic can be said to

⁵ <https://idrottensaffarer.se/sponsring/2020/01/18-miljarder-till-svensk-fotboll>

be an expression of that, when the government initially agreed that the restrictions would have a broad validity, but shortly before the entry into force, this changed to include only online casinos and slot machines. We fear that this, with the exception of gaming categories that are particularly important for gaming companies close to the government - by virtue of being either owned and / or controlled by the government or the Social Democratic Party - may also follow from the now presented proposal for special moderation . According to the Government's modus operandi in this area, for example, but not exclusively, lotteries in the final version of the bill would be exempt from this restriction.

The Swedish consumer protection in the gaming market

The government has obvious difficulties in supporting its presented motives behind the impact of gambling advertising on the extent of problem gambling. Marketing can be tiring, not least for those who do not play at all, but that fact does not constitute an acceptable argument for serious restrictions on commercial freedom of expression.

It is the duty of care that constitutes the core of the Swedish consumer protection in the gaming market. Properly used - and properly developed - it can be of great benefit to gaming consumers, and especially to the people who should not gamble for money at all.

Online gaming creates new and hopeful tools in the effort to push problem gambling to a minimum. Online gaming companies already have more comprehensive systems around customer awareness and monitoring of customer behavior compared to what anonymous land-based gaming with cash has ever been able to achieve. The future also promises more achievements; particularly interesting are fields of research in artificial intelligence and so-called machine learning. It should not be ruled out that online gaming companies in the not too distant future can identify problem gamblers before the problem game has even arisen. Another interesting area that has only recently proved to be technically feasible is an extended advertising ban via state self-exclusion systems (of the type Spelpaus.se) on social media and streaming services such as Facebook, Instagram and Twitch. Here, the government could play a central role if it only managed to absorb knowledge in this area, instead of attacking the Swedish licensing system with the now proposed and other measures already implemented by the government.

If the government is interested, we are happy to be of service with the knowledge and experience we and our members have acquired after 25 years in the industry in some thirty countries.

Best regards,

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