

2023-08-11

BOS – The Swedish Trade Association for  
Online Gambling

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.

## **Referral response no. 2023/565, The Swedish Consumer Agency's proposal for general advice on the marketing of games to consumers**

### **General comments**

The Swedish Trade Association for Online Gambling (BOS) thanks you for the invitation to comment on the Swedish Consumer Agency's proposal for general advice on the marketing of games to consumers. We represent around twenty gambling companies active in the Swedish gambling market. All have a license/permit issued by the Swedish Gambling Authority.

BOS welcomes the Swedish Consumer Agency's approach to clarify with the proposed general advice how the marketing regulations in Swedish law should be interpreted. None of our member companies act intentionally wrong. We all have to gain from the fact that interpretation disputes are rare and that instead there is a broad consensus on the interpretation of the regulations.

We share the Swedish Consumer Agency's view that general advice can play an important role as an information carrier. However, one disadvantage of the general advice is the one-sided communication. Apart from this consultation response, the preparation, despite invitations from us and a pronounced interest from BOS in a closer dialogue with the authority, has taken place exclusively without our participation and thus has been of the nature of a monologue rather than a dialogue.

This circumstance is commented on by the authority itself with the fact that an industry agreement as an alternative to general advice would have to include a variety of actors and negotiations with a variety of counterparties. "Because of that, the Swedish Consumer Agency assesses that there is a significant risk that the parties cannot agree, which can make the work of drawing up an industry agreement time-consuming and complicated."

BOS is of a different opinion. We cooperate well with industry colleagues SPER and SVALO. In a short time, we developed general advice regarding the marketing of games together with SPER (the interest organization SVALO was not yet formed when the aforementioned marketing recommendations were adopted) and these have played an important role for responsible game marketing in Sweden ever since they were adopted. We together represent an estimated 90-95 percent of the licensed gambling market in Sweden measured in market shares and find it difficult to see that it would not be representative enough to

start a collaboration with the Swedish Consumer Agency aimed at creating an industry agreement with the authorities' involvement.

Having said this, however, we largely agree with the suggestions for advice and interpretations set out in the memorandum. With few exceptions, the proposals are well in line with the industry's marketing recommendations, which were drawn up shortly after the reregulation of the Swedish gaming market in 2019.

BOS agrees that it makes sense to have the same marketing regulations for the entire gambling market. The Swedish Consumer Agency states the positive in terms of competition with such equal treatment. We agree with that conclusion, but want to emphasize that this is above all important from a consumer protection perspective. There is no risk-free gambling for money and all gambling for money should be subject to good consumer protection, including rules on marketing.

In conclusion, in these general comments, we would like to point out the importance of marketing in order to maintain a high level of channelization in Sweden, that is to say that the proportion of gambling for money that takes place in Sweden to the greatest extent possible takes place on the regulated gambling market. Being able to market themselves in established advertising channels such as television, radio and outdoor advertising is one of the few regulatory advantages that Swedish licensed gambling companies have in relation to the competition from the unlicensed gambling companies in Sweden. It is not enough to have permission to market themselves for the licensed gaming companies to win the battle against the unlicensed companies. The space to create attractive marketing content must also be relatively large.

The government's goal is that at least 90 percent of the Swedish gambling market should be channeled to the Swedish licensing system. In March 2023, the channelization rate was 77 percent for all online games, and 72 percent for online casino and online poker respectively. It is the state, including the Swedish Consumer Agency, which through its actions has the greatest opportunity to influence and also bears the greatest responsibility for remedying the deficient channeling.

Below are our detailed comments on the Swedish Consumer Agency's memorandum, with page and heading information.

Page 3

- 2.1: The guidance states that marketing must not take place where the consumer "would not normally expect such marketing".

This is very open to interpretation and further clarification is needed here to explain how betting companies should assess whether a reasonably experienced consumer would objectively "expect" to see "such marketing".

With reference to "such marketing"; does the Swedish Consumer Agency believe that gambling advertising may not be shown where a consumer does not expect to see

advertising for gambling products specifically, or does the authority believe that gambling advertising may not be shown where a consumer does not expect to see any advertising at all? We suggest that some examples be given to illustrate how this proposal should be interpreted, or even better that the paragraph be deleted.

- 2.2.1 – 2.2.1.2: The guidance states that promotions must not be intrusive or intended to attract "special attention", which is said to mean that the consumer cannot reasonably defend against them or does not reasonably expect them.

This seems to echo the above guidelines on consumer expectations. As above, this is left open to interpretation and clarification is needed on what is meant by "special attention" or "reasonable defense".

The very nature of marketing is to attract attention, which is why it must be clear where the Swedish Consumer Agency sees the difference between "special attention" and the usual level of attention that "moderate" forms of marketing create. The Swedish Consumer Agency has given examples of intrusive marketing that include pop-ups and takeovers, but these can come in different shapes/sizes and are not always inherently intrusive. Provided that such ads, including welcome pages, do not take over all or a large portion of the screen and are easy to close down or otherwise ignore, will they be considered acceptable? In addition, we are calling for a definition from the Swedish Consumer Agency on what is meant by "a large part of the screen".

We suggest that a visual illustration of what the Swedish Consumer Agency considers unacceptable be included here.

Can the Swedish Consumer Agency also confirm how this is intended to apply in connection with non-digital advertising where the consumer is "captive" and therefore cannot defend himself against advertising, for example in cinema advertising where the consumer cannot escape from advertising without leaving the premises, or TV /radio where the only possibility is to change the channel?

Page 4

- 2.2.1.3: Under this point, guidance is given that when marketing about games, well-known people should not be portrayed as having their participation in games contribute to their professional success or celebrity. A dilemma with this guidance is in the event that the professional success is actually sprung from gambling for money, for example a professional poker player. We generally believe that consumer protection is benefited by what is stated being factually correct, and it becomes misleading not to tell where certain characters' professional success actually stems from.

- 2.2.2.1: The guidance states that marketing must be factual, neutral and balanced in design and content

We understand this to mean that content must be "neutral and balanced" in terms of ensuring that content is responsible, moderate and not excessive. It should be clarified that

the reference to "neutral" design and content is not intended to limit an advertiser's creative freedom to use unique concepts and designs in the promotion of games.

The word "neutral" does not seem to be compatible with advertising which by its nature is intended to influence the consumer's perception of the brand or product, and is never merely "neutral" about such things. We propose to limit the guidance to "factual" and "balanced", which we believe would achieve the same objective.

The guidance states that offers cannot be described as "free" if consumers are required to wager money or provide personal contact details. We believe that this goes beyond the scope of the Gambling Act and therefore beyond the general advice on gambling marketing. It is necessary for betting companies to collect a player's contact information in order to register and verify him before they can make use of any offer. This guidance, as drafted, would therefore introduce a blanket ban on all free play promotions. Is this really the Swedish Consumer Agency's intention?

We understand that the average consumer would understand the word "free" to mean that no additional financial commitment is required and therefore expect that they may be required to provide their contact information in order to participate in the offer. This guidance may therefore lead to greater consumer confusion as to whether a "bonus spin" or "prize" requires additional expenditure unless it is labeled as "free".

- 2.3: The guidance states that the choice of "characters" must be assessed in marketing. Can the Swedish Consumer Agency confirm if this is strictly about fictional characters, or does the guidance extend to real individuals? Which criteria does the Swedish Consumer Agency consider to be most relevant for assessing whether a character is aimed at young people? We oppose any notion that all animated or otherwise fictional characters are aimed at minors. Such a view would most likely reveal a palpable ignorance of many adults' cultural consumption.

Page 6

- 2.4: The guidance states that outdoor advertising must not be near schools. We suggest including a minimum proximity threshold, for example 150m, to avoid interpretation differences.

- 3.1: The guidance states that a ban on direct marketing applies to "all types of marketing".

We suggest that this should be amended to clarify that the ban applies to all forms of direct marketing and not "all marketing".

Page 7

- 5.1.1: The guidance states that a player should not have to scroll to read the terms.

Can the Swedish Consumer Agency clarify that the intention is that a player should not have to scroll to find the link to the conditions for an offer? It is usually the case that a player

needs to scroll to read the full terms and conditions of an offer as these would not fit on one page (especially when viewed on mobile).

Page 8

- 5.2.1: The guidance states that the full terms must be no more than one click away. We note that in some formats, including online advertising, it is not possible to include an active link to the terms, but instead a URL is provided that leads directly to the terms but which the player would have to enter himself. Is this acceptable in the context of such formats?
- 5.2.2: The guidance states that the licensee must ensure that the consumer has taken note of the terms of the offer, regardless of the medium. The guidance states that buttons that allow the player to indicate they accept the offer are not allowed.

This is a very strong obligation that will be burdensome for the gambling companies to fulfill. Alternatively, we propose an obligation for gambling companies to ensure that the consumer has been prominently presented with the terms and conditions and given an opportunity to review them, or alternatively to ensure that the player at least indicates to the gambling company that he has read the terms and conditions (even if this is not possible to actually verify this).

The Consumer Agency's guidance appears to prohibit the use of "opt in" buttons, which is a common approach in jurisdictions with similar requirements to ensure players have agreed to (and therefore read) the terms. How does the Swedish Consumer Agency therefore expect the gambling companies to ensure that the players have read the rules and conditions?

Finally, a comment on a section in the decision memorandum, not the actual proposal to the General Council:

- 6.1: The guidance states that gambling companies may not claim that their registration process is not cumbersome or complicated.

We are critical of the fact that it should be prohibited to state that the gambling company offers a hassle-free administration regarding, for example, registration and payment of gambling winnings. Being told about it is reasonably in the interest of the licensing system, not least in relation to the daily battle online gambling companies have against unlicensed gambling. Here, the licensed gambling companies offer an obvious competitive advantage in relation to the unlicensed gambling companies in the licensed gambling companies' simplicity, speed and reliability, which there is every reason to inform the gambling consumer about.

Gustaf Hoffstedt  
Secretary General

BOS – The Swedish Trade Association for Online Gambling

Box 3198

103 63 Stockholm

[gustaf.hoffstedt@bos.nu](mailto:gustaf.hoffstedt@bos.nu)

[www.bos.nu](http://www.bos.nu)