

FRENCH COMPETITION AUTHORITY ISSUES RECOMMENDATIONS TO WARRANT A REAL COMPETITION ON THE ONLINE GAMBLING MARKET

By Diane Mullenex, Avocat à la Cour – Solicitor England & Wales, and Annabelle Richard, Avocat à la Cour – Attorney at Law (New York Bar), Ichay & Mullenex Avocats.

On January 20, 2011 the French Competition Authority issued its opinion on the potential competition issues likely to arise following the enactment of the law of May 12, 2010 which opened the online gambling sector to competition.

The Authority decided on September 15, 2010 to initiate a self-referral and provide an opinion on several competition issues that had been raised, in particular by the EGBA, about the French online gambling market. The purpose was, in particular, to set up a framework providing the sport events organisers and the operators with guidelines intended to guide them when negotiating betting rights. As such, the aim was to examine “*the market access conditions and notably the agreements providing betting rights*”, as well as “*the competition distortions that may be created within this framework, notably the provisions for establishing the remuneration for the right to offer bets*”.

It took the Authority several months for to issue its opinion, that has been delayed several times.

After completing its investigations and hearing many actors of the industry, the French Competition Authority finally delivered its opinion. The main points of such opinion could be summarised as follows:

- Regarding betting rights agreement to be executed by online gambling operators and sport events organisers: the French Competition Authority acknowledges that if the fee requested by sport events

organisers to grant a betting right is too high, it would have a negative impact on the entrance of new players in the market. The Authority invites the French online gambling regulator, ARJEL, to provide guidelines to fix the conditions for the negotiations of agreements between sport events organisers and operators. The fees should be regulated *a priori* and ARJEL should offer a mechanism to settle disputes related to such fees.

- Regarding the access to data pertaining to horse races by new entrants: the Authority recommends the legislator to reinforce the regulatory provisions that warrant non discriminatory access of new entrants to all data pertaining to horse races. The Authority recommends designing a standard agreement which would list the information that the races organisers may request from operators in exchange for the data. ARJEL should set up a surveillance as well as specific sanctions to warrant the compliance which such obligations.
- On the possibility for new entrants to compete with the former monopoly holder: considering that PMU and Française des Jeux (“FDJ”) still hold monopolies on the land-based distribution networks and on certain activities, the Authority recommends a legal and operational division of the

activities which are conducted under the monopolies and the activities which are conducted in a market open to competition. The Authority also acknowledges the competition advantage granted to PMU considering the tremendous amount of bets collected, in particular through its land-based distribution network. It allows PMU to offer more complex bets to punters, with a better remuneration. The Authority recommends that the legislator clarifies the applicable regulation on this point. The Authority also recommends pooling the winnings between races, enable allow new entrants to offer bets to compete with those of the PMU.

Although one may not call this opinion revolutionary - as it does not *per se*

condemn the betting right principle for example - it is clearly stating and acknowledging most of the competition issues that have been raised by newly licensed operators for months.

Although this opinion is not binding upon either ARJEL or the French government, it will be difficult for both to ignore it entirely. It will therefore be a powerful instrument in the hands of the operators to request that the law be amended along the lines set out by the French Competition Authority.

For further information on the above, please contact Diane Mullenex and Annabelle Richard at **Ichay & Mullenex Avocats** (mullenex@ima-avocats.com or richard@ima-avocats.com or +33.1.42.89.19.89).

Ichay & Mullenex Avocats is a French law firm focusing on all legal issues related to the new technologies, the green business and the sustainable development in France and abroad. They are considered experts in intellectual property and Internet law, e-commerce, online gaming, data protection. Ichay & Mullenex Avocats also assists its clients on all issues related to financing, mergers & acquisitions, restructuring, etc. and advises them on their litigation and arbitration procedures.

5, rue de Monceau 75008 Paris - France
Tel : +33 1 42 89 19 80
Fax : + 33 1 42 89 14 99
www.ichay-mullenex.fr