Gambling and advertising: an international study of regulatory intervention

Introduction

This paper is designed to provide insight into three areas. First, it gives an overview and framework for how gambling advertising is evolving in commercial gambling landscapes across Europe, discussing the drivers of growth, key forms of advertising and marketing and how this is impacting both operator and consumer engagement. Second, the advertising restrictions of seven European jurisdictions are explained: Sweden, Denmark, Norway, Belgium, Italy, Spain, UK – all of which either have or are changing their advertising regulatory framework to become more restrictive. Finally, we consider the efficacy of gambling advertising restrictions through the lenses of academic research literature as well as the international comparisons provided, and the practical implications of enforcement and channelling demand to domestically regulated vs. illegal supply.

I. The commercial gambling landscape

The commercial gambling market has seen a significant growth in gambling advertising over the last c. twenty years. While overall engagement with gambling has not grown materially, the growth of online gambling has led the growth in gambling advertising, since online is a marketing-led rather than venue-led channel. Permissive domestic regulation in a number of key countries combined with consumer technology change has opened up opportunities for greater levels of advertising.

Gambling advertising has grown significantly (c. six-fold) in many European jurisdictions in the last 15 years, driven principally by 'channel shift' to online channels. This significant and relatively rapid growth in gambling advertising marketing has caused a political reaction in a large number of European countries, driving advertising restrictions typically after the increase has occurred.

II. Advertising restrictions - international comparisons

A growing number of domestically regulated European gambling markets are introducing greater levels of advertising restriction or even bans. We analyse the legislative and regulatory framework of seven jurisdictions. While each of these jurisdictions is approaching the issue differently and the majority of legislative change is either very new or not yet in force, comparison allows a number of important lessons to be drawn. We bring these together in the next section.

Each country analysed is adopting its own approach to its own issues within specific legislative and regulatory frameworks. However, the very fact that advertising restrictions are being brought in after an increase in advertising, and typically with political pressure, means that responses tend to be specific and disjointed rather than coordinated with overall regulatory frameworks and policy aims.

III. Advertising restrictions – efficacy

Academic research on the impact of gambling advertising is inconclusive on the efficacy of broad restrictions, but studies point to how advertising can be made safer. The enforcement of gambling advertising restrictions can be effective for the most visible elements given that large, risk-averse media and technology companies are also involved, but this does not necessarily disrupt the black market as less visible alternatives exist. This means that restricting advertising can adversely impact channelization (whereby demand is channelled to domestically regulated vs. illegal supply).

Severely restricting advertising is likely to be less important to black market dynamics than other issues (tax, product, enforcement), but it is still a key contributor. More directly, severely restricted advertising does not necessarily reduce gambling related harm, but does make it less easy for the domestically regulated market to compete against any black market. However, a very liberal approach to gambling advertising has clearly caused political-regulatory issues in a large number of countries.

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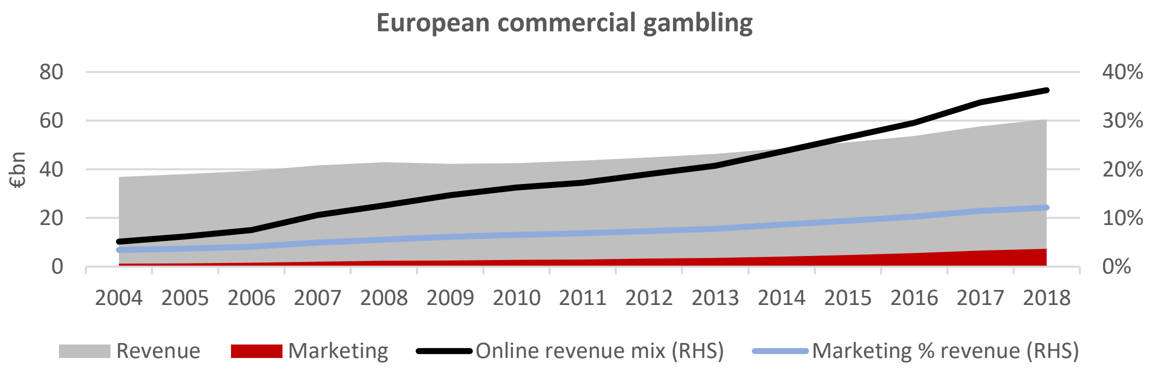
Gambling companies have always engaged in advertising and marketing where they have been allowed, including for example the advertising value of shop fronts. However, in the vast majority of landbased gambling (casinos, gaming halls, retail-only betting), advertising is a relatively small component of business expenditure (usually less than 5% of revenue and typically less than 2%[1]), with focus being much more on location, product and customer service. Consequently, prior to the internet and in areas where landbased gaming is still dominant (e.g. the US), gambling advertising was limited.

The internet has changed this completely. Unlike in a landbased environment, online retailers cannot (broadly speaking) 'own' space and there are no physical limitations to supply. The most important way for an online gambling operator to attract the attention of potential customers is therefore marketing and advertising. Equally, many online gambling customers like to shop around (with the top 10% of actives typically having more than 10 separate gambling accounts each[2]), meaning that marketing and advertising is important not just for growing the market, but also for growing and maintaining market share: online marketing and advertising has a highly competitive dynamic.

Because of the underlying importance and competitive dynamics of online gambling marketing and advertising, even very large operators will typically spend c. 15-20% of revenue on the activity (including internal headcount, agency fees etc)[3], while smaller operators can easily spend up to 70% of revenue on marketing and advertising for brief periods (although there is typically a new small operator to take the place of those which run out of money, keeping overall spend in the 'tail' high)[4]. The blended effect of these rates of expenditure is that marketing and advertising typically runs at c. 25-35% of online revenue without any restrictions (e.g. directly or through high rates of tax). To put these percentages, and the changing dynamics of channel shift, into a broader European perspective, we can illustrate the change from the mid-2000s to the present day (RP estimates):



Graph illustrates the changing size of the European commercial gambling market in revenue terms (€bn, grey) and the changing size of the amount of money spend on marketing (€bn, red); the black line shows the percentage of revenue derived from online – now nearly 40%, while the blue line shows the proportion of total revenue spent on marketing, now over 10%. (RP estimates)

[1] Source: listed company Reports and Accounts
[2] Source: e.g. https://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-participation-in-2018-behaviour-awareness-and-attitudes.pdf
[3] Source: listed company Reports and Accounts, Regulus Partners estimates
[4] Source: Regulus Partners estimates

Defining gambling advertising

Gambling advertising is both dangerously precise and dangerously vague. It is therefore worth defining not only for the purposes of this document but also to be considered within the context of legislation (especially see Italy section below). In a very narrow sense, advertising can mean specific media spend such as TV, radio commercials, online banners, sponsorship etc (i.e. excluding social media activity, search engine optimisation etc). In its very broadest sense, advertising can also capture elements sometimes more generally referred to as 'marketing' (such as affiliates, search engine spend / optimisation, Social Media campaigns, promotional messaging, bonusing) and even customer contact (e.g. emails about account information or changes to T&Cs).

For the purposes of this document, we are treating advertising to incorporate all forms of marketing other than bonuses, but we will make clear the type of advertising and marketing activity we are addressing where the distinction is important. In general terms, we would caution against being too precise (thus allowing easy work-arounds) or too vague (and so accidentally preventing customer contact with appropriate intentions, including for example social responsibility messaging).

Gambling advertising by channel

Marketing and advertising by type			
Type	**Users**	**Scale (overall spend)**	**Supply chain**
Print advertising	Brand-led	0-2%	Mainstream media
TV & Radio advertising	Brand / call to action-led	0-15%	Mainstream media
Other traditional advertising	Brand-led	0-2%	Mainstream media
Sponsorship	Brand / awareness-led	2-5%	Usually sports clubs / leagues
Social Media advertising	Brand / awareness-led	0-10%	Major social networks
Social Media marketing	Brand / call to action-led	0-5%	Major social networks
Direct online marketing	Regular-user led	10-60%	ISPs
Affiliate marketing - media	Awareness-led	0-20%	Mainstream / specialist media
Affiliate marketing - specialist	Regular-user led	10-60%	Specialist media

It can be seen from the above summary that there are a wide range of advertising and marketing options open and the spend mix of individual operators can vary considerably.

Print media is not a particularly large element of gambling advertising spend because audiences tend to be quite generalist, readership tends to be older and in decline, and restrictive regulation is often in place in markets where no domestic licence is available. However, some specialist print media can be very important in certain markets, such as the Racing Post in the UK.

TV and Radio advertising tend to be shaped by regulatory considerations since, as with print media, access can be relatively easily restricted or prevented with clear legislation (especially since domestic mainstream media companies are typically required, which have no incentive to break the law or run high regulatory risks). However, where TV and Radio advertising is allowed, it tends to form a material level of overall expenditure (up to 15% of total marketing expenditure), particularly for brand-led online companies. TV advertising is also, by its nature, among the most visible of advertising forms.

Sponsorship is an attractive means of reaching mass engaged audiences, especially through sport. Sponsorship can also be a way to reach audiences where advertising restrictions are very severe. For example, the use of globally successful football teams, or teams playing in globally recognised leagues allows customer access to Asian markets. The sponsorship deals within specific domestic markets are not therefore necessarily designed to address those markets, though they do have a direct impact upon them (e.g. a large British fan-base will be watching an EPL team with an Asian betting sponsor).

Social media is now a key part of many gambling advertising budgets and capabilities. Engagement can be split between buying advertising space and running social media campaigns which are designed to lead to direct customer engagement and/or giving brands a 'voice'. Perhaps significantly, the growing importance social media as a marketing channel requires the support and cooperation of the major social media platforms to allow gambling advertising and/or messaging. Critically in terms of visibility and enforcement, unlike with direct online marketing (below), social media activity and advertising requires a social media platform to carry out: there are relatively few of these of any scale.

Direct online marketing can encompass a very wide range of advertising and marketing activities done directly online by the operator or the operator's agencies. These can range from buying advertising space on websites to buying keywords with search engines (which mean that the operator's brand / website will come up prominently within the advertised search section of the search engine results if the user searches for a relevant word such as "betting" or "roulette"). It is telling that recent UK research found that online gambling related key words were the most expensive for operators to buy by some margin – significantly more expensive than more mainstream activities such as finance and real estate.[5] In some markets where gambling regulations are tight (and specific), some search engines restrict the ability of gambling operators and agencies to buy key words, significantly reducing an easy and effective (if expensive) marketing model.[6]

It can be seen that the majority of advertising and marketing options available to gambling operators require some form of media, sports and/or consumer technology company in the supply chain. These companies tend to be law abiding and risk averse, meaning that in heavily restricted regulatory environments, they may not be available to operators either at all or at a commercially attractive cost. We discuss the implications of this from an enforcement perspective in more detail below.

In markets where more direct forms of advertising are restricted, affiliates tend to be a key marketing channel. Affiliates can also mean a lot of things. At one end of the scale, they can be major media businesses bringing high levels of sophistication and probity as well as scale. At the other end, they are basic websites operated by individuals designed to target regular user traffic through gambling-specific content (e.g. 'how to win at blackjack' or gambling website reviews). These businesses are either paid per customer referral, on a revenue-share basis, or a combination. Because the a great many of these sites are owner-operated and not based in any specific jurisdiction, they are very hard to control and have no commercial incentive to follow (or potentially even awareness of) rules and regulations. This form of marketing has therefore been very effective at circumventing advertising restrictions. However, at the small-business end of the affiliate scale, opportunities to reach the mass market and build brands are also limited. Consequently, in more mature markets with limited advertising restrictions, affiliates have reduced in importance in terms of marketing spend and customer acquisition, with some major operators even significantly reducing their exposure from a perception and responsibility perspective.[7] There is also a growing awareness among regulators that at least some aspects of affiliate activity should be specifically regulated, for both probity and channelization reasons (i.e. the use of affiliates by illegal supply to circumvent restrictions).[8]

[5] Source: https://www.wordstream.com/blog/ws/2017/06/28/most-expensive-keywords-uk-edition
[6] Source: https://support.google.com/adspolicy/answer/6018017?hl=en-GB
[7] Source: e.g. https://www.racingpost.com/news/sky-bet-end-affiliate-programme-as-regulatory-pressure-mounts/299477
[8] Source: e.g. https://www.asa.org.uk/news/gambling-on-your-affiliates.html ; https://egr.global/intel/news/danish-gambling-authority-plots-illegal-affiliates-clampdown/

Gambling advertising by regulatory framework

It will be noted from the discussion on different forms of advertising that there is an important distinction between those forms of marketing that require a 'respectable' corporate supply chain and those that do not. This has a considerable bearing on the way in which operators market depending upon the regulatory environment that they are operating in – indeed, many operators will combine different practices adjusted to the regulatory environments of the markets in which they operate, since very few online gambling companies operate in only one jurisdiction.

- **Advertising and sponsorship issues**: many grey markets have either old legislation or a regulatory position which means that media buying and/or domestic sponsorship is not possible; this increases the importance of affiliates and other 'indirect' routes to customers and creates a barrier to mass market penetration (reaching the casual customer not necessarily looking for gambling content)
- **Consumer technology and services issues**: major consumer technology companies (notably Apple, Google and some banks / credit card issuers) take a risk-averse view to gambling and so do not allow their services to be used in some grey markets (most notably Apple in Norway – following the Netherlands example, Google 'Pay-per-click' where restrictive laws are in place); again, this not only emphasises indirect routes but also creates a barrier to successful mass market penetration (inhibiting access, creating a poorer user experience)

For these reasons, and for government prioritisation (the scale of the issue), .com markets (licensed from an offshore jurisdiction e.g. Malta) tend to be less 'mature' in their behaviour than domestically regulated markets (if these barriers are in place); this an important enough dynamic to explore further.

Gambling advertising and mass market participation

The customers of most commercial gambling businesses bifurcate relatively clearly into 'VIP', 'regular user' and 'occasional user' customers. Indeed, only draw-based lottery products (not typically commercial, but state monopolies), tend not to fit this trend. As a broad rule, VIPs can be considered the top 1% of users, which typically generate c. 15-25% of revenue; regular users represent the following 9% and c. 40-60% of revenue; occasional users, the remaining 90% and 25-45% of revenue.

From a behavioural standpoint, VIPs and regular users can be considered engaged gamblers – they will seek out gambling products. From a marketing and advertising standpoint, this means two things: it can be quite specific and designed to be 'found' (i.e. at or near a gambling venue, on gambling-specific online sites); operator expenditure and activity is more about market share or encouraging immediate expenditure than growing the market per se. Occasional gamblers, however, tend to have a more mass market approach: advertising and marketing is part of the recruitment process of less engaged gamblers who might not consider gambling as an activity unless it were marketing to them.

The lack of advertising restrictions, combined with the consumer technology and service issues discussed above, therefore skews the cohort percentages further away from VIPS and regular users and towards occasional users. Conversely, advertising restrictions skews markets towards VIPs and heavy users. The growing mass market appeal of gambling in environments where advertising faces limited restrictions has been a key driver of online gambling growth, in our view. Evidence of this can be seen most clearly in the UK, where there are c. 30m active online accounts[9] with an average number of accounts per user of 3[10], meaning the total number of actives is c. 10m: c. 20% of the total adult population.

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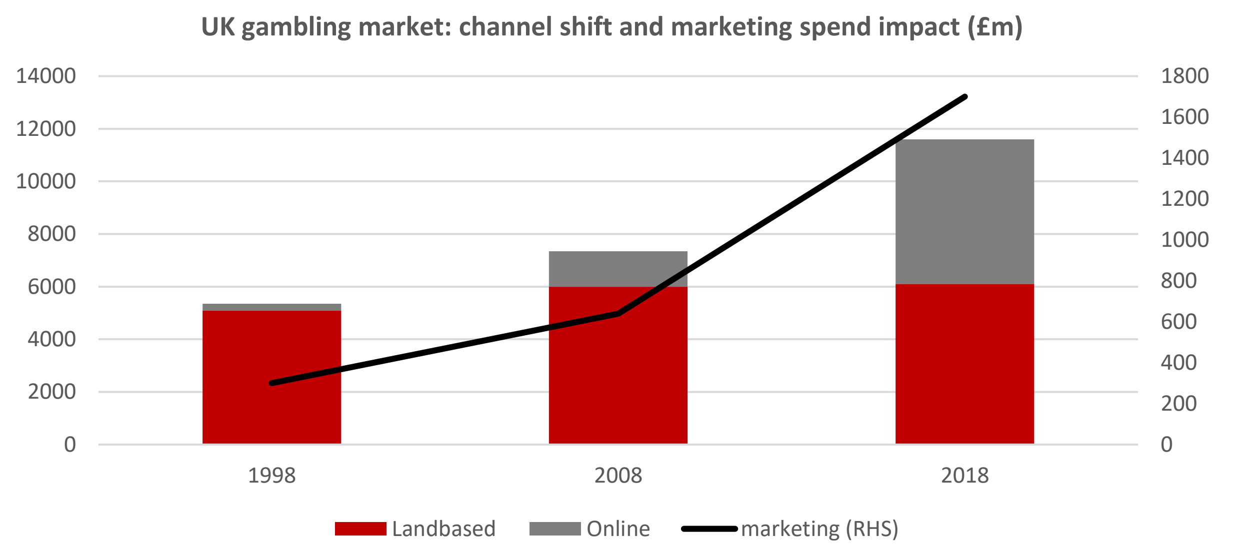
[9] Source: https://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Statistics/Industry-statistics.aspx

[10] Source: see note 2

How gambling advertising is changing

Over the last two decades, landbased gambling has increasingly struggled to grow and some elements have even faced decline. Conversely, online gambling has exhibited strong growth in most markets, regardless of regulatory conditions (driven, at least initially, by VIP and regular user adoption). Statistics on the size of global gambling markets over time are notoriously inaccurate due to the opaque nature of most online activity and the wide variation in accounting standards of even visible supply. However, the UK is a useful proxy for the point we are about to make, where both official data and commercial points of triangulation (listed companies, specific tax receipts etc) are clear.

Commercial gambling in the UK has faced a significant number of regulatory and consumer changes in the past 20 years, which are not relevant to detail here, though it is these changes that have grabbed headlines and shaped the narrative of the various sectors involved. However, underlying growth in commercial gambling has been a remarkably consistent c. 4% pa[11]: only slightly outperforming growth in Household Disposable Income (c. 3.5%).[12] However in the same timeframe, online gambling has moved from less than 3% of total revenue to over 50%. Simply reflecting the advertising and marketing centric business models of online vs. landbased gambling, this means that marketing spend has grown from less than 5% of gambling revenue in the 1990s to c. 15% now. Moreover, as channel shift continues, this mix effect will continue to occur – growing advertising and marketing at a disproportionately higher rate than the growth (or otherwise) in overall commercial gambling revenue. We illustrate this from an historical perspective, again using the UK (RP estimates).



Graph illustrates the changing size and shape of the UK commercial gambling market as an example of a 'mature' regulated Western European market. The total block size represents revenue in each sample year (£m), split by landbased (red element) and online (grey element); the black line shows how much money was spent on marketing in each year (£m) and how this has changed. (RP estimates)

It can be seen that while the UK landbased sector has remained broadly static in absolute revenue terms over the last 20 years, all the growth has been online, with a corresponding shift to a marketing-led rather than a venue-led customer acquisition and engagement model. This has meant that while the overall commercial sector (i.e. excluding lottery) has grown by a relatively modest 4% CAGR (slightly better than the underlying economy), marketing has grown by 5.5x over the period (9% CAGR) from c. £300m to c. £1.7bn: far outstripping overall gambling or broader economic growth.

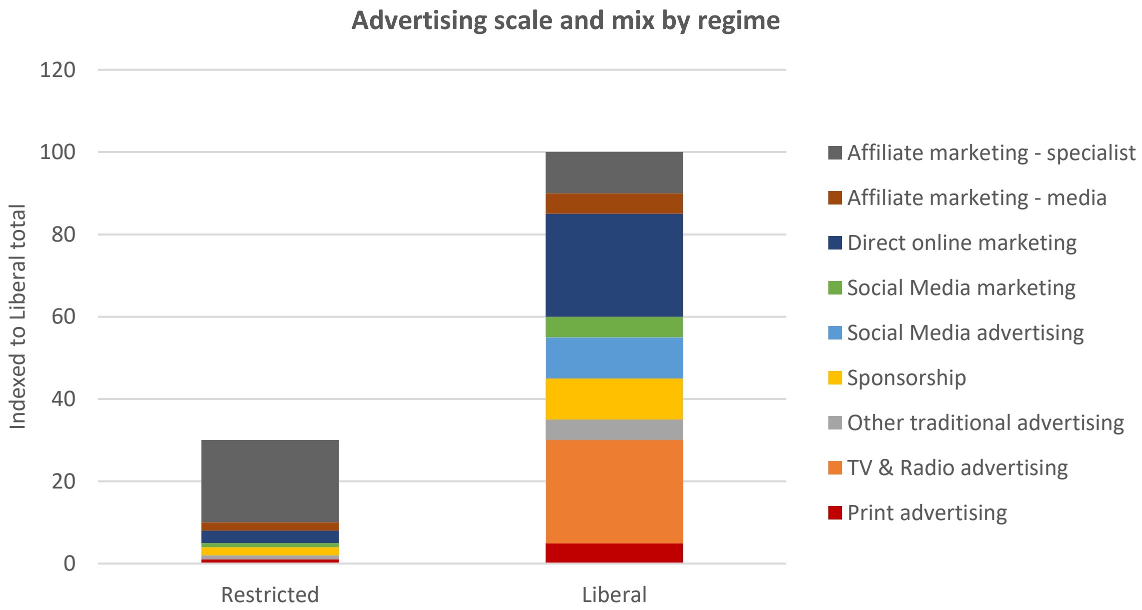
[11] Source: Gambling Commission Industry Statistics, Regulus Partners estimates

[12] Source: https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/

While the UK clearly has differences to a number of other markets (which we discuss in the next section), underlying consumer behaviours across markets are broadly similar dependent upon the levels of market maturity exhibited (freedom to advertise/market; access to high quality affordable mobile/online infrastructure; access to online banking and/or effective alternative payments methods). In this context, it is worth noting that the Netherlands has a lot more in common with the UK from an underlying consumer perspective than the specific nature of its landbased gambling regulator regime.

As well as the broader changes driven by channel shift, there are also material changes occurring within advertising that are reflected in gambling. For example, historically many online gambling companies would heavily rely on affiliates (sites with related gambling content carrying advertisements). Affiliates tend to be at their strongest in low maturity markets without strong brands and especially where other forms of marketing are not available. Consequently, in mature markets where advertising is allowed, affiliates have fallen from c. 50% of marketing mix (or more) to under 10%. Nevertheless, the disparate, unlicensed and third-party nature of affiliates means that attention should be given to them at the regulatory layer, since it is an area where abuses can be hidden.

Another example of important change is Social Media, an area which is attracting ever greater advertising and marketing spend vs. traditional broadcast. Indeed, digital advertising spend has already overtaken TV ad spend overall[13], while Social Media is likely to overtake TV advertising spend relatively soon.[14] Equally, viewing sports is changing, moving away from traditional broadcast and towards internet-led 'Over-The-Top' broadcasting (streaming online).[15] Gambling is inevitably responding to these commercial and structural changes to consumer behaviour and advertising, meaning that any legislative change that focusses on only one element of advertising (e.g. TV broadcast) is unlikely to be 'future proof' and may drive advertising to less visible areas.



[13] Source: e.g. https://www.emarketer.com/content/us-digital-ad-spending-will-surpass-traditional-in-2019
[14] Source: e.g. https://www.theguardian.com/media/2018/apr/02/social-media-ad-spend-to-overtake-tvs-in-spite-of-facebook-woes
[15] Source: e.g. https://www.sportcal.com//PDF/magazine/insight15.pdf

II. Advertising restrictions - international comparisons

A growing number of domestically regulated European gambling markets are introducing greater levels of advertising restriction or even bans. We analyse the legislative and regulatory framework of seven jurisdictions. While each of these jurisdictions is approaching the issue differently and the majority of legislative change is either very new or not yet in force, comparison allows a number of important lessons to be drawn. We bring these together in the next section.

Online gambling was not historically regulated by national governments, but by the jurisdictions where operators chose to site their servers and other infrastructure (such as Gibraltar, Malta, Curacao etc). Unsurprisingly, given the competitive nature of the 'Point of Supply' jurisdictions (trying to attract operators and therefore inward investment) and the lack of domestic customers (typically populations of 0.5m or less), these regulatory regimes contain few if any marketing and advertising restrictions. Further, EU (EC) guidance (directed at Sweden) in 2013 militated against setting or enforcing gambling advertising and sponsorship restrictions (*inter alia*) without clear and specific justification (also providing EEA licensed operators with a legal logic to advertise and media companies with a legal ground to accept gambling business if legislation was unclear, typically due to being pre-internet)[16].

This 'Point of Supply' market started to change from 2006, when Italy domestically regulated online betting and poker, followed later other games. A large number of other European countries then followed (see examples below). However, in the early growth phase of online gambling, operational focus tended to be on regular users, while regulations tended to borrow from landbased environments, where marketing and advertising are not core business drivers (see above). Consequently, there were very few advertising and marketing restrictions factored into initial legislation or regulatory regimes that were not covered by general advertising standards.

The growing mass market nature of online gambling across jurisdictions, combined by the increasingly competitive nature of online gambling, its growing size (in revenue terms, creating bigger potential budgets), as well as the greater marketing and advertising options open to domestically regulated supply, has created a boom in gambling advertising across a large number of jurisdictions. This boom has been increasingly noticed by politicians, press, regulators and other stakeholders such as safer gambling groups. Consequently, there has been a gathering wave of restrictive regulations around gambling advertising and marketing.

We examine seven examples of these changes below from European countries (Sweden, Denmark, Norway, Belgium, Italy, Spain, UK). This section covers:

- What the legal and regulatory framework is for advertising and marketing restrictions
- When, how and why it has been introduced and/or changed
- What the aims of the changes were
- What the impact of the changes was on the market (consumers, operators)
- Whether the stated aims are being met (and issues with measuring these)
- What unintended consequences might be caused by the restrictions

[16] Source: http://europa.eu/rapid/press-release_IP-13-1101_en.htm

Sweden

Sweden regulated online gambling for commercial licensees in 2019. Advertising is covered both specifically by Gambling Act, 2018, the Marketing Act 2008 and the Radio and Television Act 2010. Regulatory authority is also split along similar lines, with the Gambling Authority covering compliance with gambling-specific law and the Consumer Agency covering compliance with media law.

Gambling Act 2018 requires that[17]:

- only domestically licensed operators can advertise on radio and television (a new requirement coming into force in 2019, previously .com operators could advertise on Swedish radio and television because the Lotteries Act contained no offshore enforcement provisions)
- Licence holders are required to ensure that sponsorship material with gambling logos are not found on items designed to be used or worn by underage persons
- Marketing is required to be conducted with 'a degree of moderation' and cannot be specifically directed at people under 18
- Direct marketing cannot be aimed at players who have self-excluded (on a national register), or at players who have closed their account with the operator unless specifically opting-in
- The minimum age to gambling is to be carried or made visible on commercial communications, as is information on problem gambling support helplines
- Marketing must be fair and not misleading (covered by the Marketing Act)
- Separately, but effectively a form of marketing, customer bonuses are restricted to sign-on incentives for new customers only (specifically "the first occasion on which the player participates in a game")

It can be seen that outside some specific requirements (age requirements, bonuses), Sweden's regulation is rather subjective and its aims arguably express more of an outcome-led operator behavioural hope than a clear regulatory framework ("moderate marketing"). This lack of firm guidance, combined with the initial flurry of sign-on bonuses by newly licensed operators and the availability of new forms of marketing (such as Google 'pay per click'), meant that there has been a spike in marketing upon Sweden's regulation: the opposite of the moderation that was intended. It should be noted that this increase was already on a high base, Sifo estimating that gambling advertising spend in Sweden in 2017 was €560m (€70 per adult head), more than doubling since 2013.

While hard data on the spike is not available, it's political reaction can be clearly seen, with Sweden's Minister for Public Administration and Consumer Affairs, Ardalan Shekarabi (the politician who led the online regulation process) already implementing a regulatory review to assess whether further explicit marketing restrictions are required in response to signs of "excessive advertising, witnessed in Sweden's newly reformed gambling marketplace" (with a voluntary industry code not being deemed enough). The review will assess whether the introduction of the new advertising tools will reduce harmful gambling, whether bonuses should be further restricted and whether further advertising restrictions should be introduced, including a full or partial ban. It is important to note that this review was launched just four months after the domestically regulated market was launched: a very rapid 'backlash'.[18] This also seems to be supported by the public, with a Sifo survey finding that 53% of Swedish people back an advertising ban, with 30% 'partially agreeing'.

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[17] Source: https://www.spelinspektionen.se/globalassets/dokument/engelsk/oversatt-spellagen/english-spellagen-sfs-201_1138.pdf

[18] Source: https://uk.reuters.com/article/sweden-gambling/update-1-sweden-could-ban-online-casino-advertising-idUKL5N2264TL

It is too early to state whether the new advertising rules introduced have had any impact yet (beyond a spike), though we note the review will try to address this (especially as 'moderate' is now being interpreted through the courts). The broader exhortation to keep marketing 'moderate' has clearly failed, however, and has required further political-regulatory action.

The impact on Problem Gambling in Sweden of the new regime is also not yet possible to tell, though PG surveys suggest fairly static rates of problem gambling on moderately declining (lottery-led) participation. However, evidence of 'pathological gambling' among women has increased (albeit on a very low sample size), which the government has linked to aggressive online advertising, timing its announcement on curbing aggressive advertising alongside the release of the 2018 survey.[19]

We believe that there is arguably an important unintended consequence of the specific nature of the Swedish regulation to consider. While the requirement to approach marketing with moderation is broad and ill-defined (especially in a competitive landscape where licensees need to stand out to even maintain market share), the restriction to sign-on bonuses only is clear and specific. The combination of these two factors, with limited specific restrictions on advertising and marketing caused a foreseeable major spike in marketing activity.

This is because a large number of Swedish-facing businesses naturally wanted (needed) to be licenced from the first day of operations, whereupon they needed to capture as many of their previous and new customers as possible with a combination of marketing and sign-on bonuses. Further, the best way to maximise the one-off nature of sign-on bonuses is to support it with highly visible marketing and advertising campaigns. This combination effectively incentivised all existing Sweden-facing businesses to 'front-end-load' marketing in a re-regulated market to the early months of 2019.

However, while this issue suggests that we might expect a level of normalisation, we would make two points of caution. First, new licensees are being introduced into the market at the rate of c. 1-2 per month and there are few restrictions to this: new licensees will likely conduct aggressive advertising campaigns to take full advantage of temporary advantage of their sign-on bonus rights, both increasing marketing and also causing existing licensees to spend money to ensure their share of voice is maintained. The Swedish regulatory system is therefore arguably accidentally designed to encourage aggressive marketing on an endemic basis. Second, even if a combination of structural factors and licensee self-help (i.e. following the requirement to be moderate regardless of competitive pressure) reduces the level of marketing and advertising in Sweden from that seen in Q1, the political and public perception damage has already done, with a review already announced.

[19] Source: https://www.folkhalsomyndigheten.se/contentassets/e2f80df7971e4abfa615a5edcf460897/resultat-swelogs-2018-2019.pdf

Denmark

Denmark regulated online gambling for commercial licensees in 2012. Advertising is covered both specifically by Act on Gambling, 2010, the Marketing Practices Act, the Radio and Television Broadcasting Act and regulatory guidelines. Regulatory authority is also split along similar lines, with the Gambling Authority covering compliance with gambling-specific law and the Consumer Ombudsman covering compliance with media law; the Danish Ministry of Culture also has oversight of radio and TV advertising law.

Gambling Act 2010 requires that[20]:

- The chances of winning are displayed in a correct and balanced manner
- Games must be produced as an entertainment offer (i.e. not suggested to make money), not use celebrities with a suggestion that gambling helped their success, or suggest that lifestyle or social acceptance can be enhanced
- Marketing cannot be targeted at people under 18
- Advertising without a Danish licence is prohibited

The Act also stipulates that the ministry of taxation can provide further requirements (e.g. since January 2017 nationally self-excluded players can opt out of all marketing). The Marketing Practices Act also covers more general protections for minors (not taking advantage of credulity) and provides the interpretative framework. Bonuses must also be clear in terms of Terms & Conditions, with statutory disclosure requirements of T&Cs and other offer limitations when marketing bonuses.

Denmark's advertising framework is therefore very liberal and principles-based, with the core elements ensuring fairness, not misleading and not targeting children. There are no provisions that restrict the volume or type of advertising beyond these narrow issues. Consequently, gambling advertising in Denmark (including TV) has been significant and caused regulatory concern. Further, a study by VIVE (the National Research Centre for Welfare), found that while rates of problem gambling in Denmark remain lower than in comparable countries such as the UK, Norway and Finland, rates of problem gambling had increased somewhat (0.18% vs. 0.11%; though with low levels of statistical accuracy) on declining overall participation (63% of adults in 2016 vs. 73% in 2005, including lottery), with 18-39 year old men and online betting flagging the highest risk.[21]

In March 2019, the Danish Gambling Authority, in conjunction with other stakeholders (e.g the Danish Online Gambling Association – so in part industry-led and still essentially voluntary, if encouraged), launched a new advertising Code of Conduct, which represents a new 'minimum standard' and comes into force in July 2019. Its key provisions are[22]:

- Avoid TV advertising in periods of high child and youth viewing
- Reduce overall TV advertising with a binding agreement with commercial TV stations
- Avoid coincidence of gambling adverts with payday loan adverts
- Improve Social Media capabilities to avoid targeting children
- Include messages on responsible and moderate usage as well as displaying PG helpline details

- More clearly display age limits
- Avoid gambling logos on sponsorship merchandise aimed at children

[20] Source: https://www.retsinformation.dk/Forms/R0710.aspx?id=177149#id8c05fab8-dce3-46bd-8407-d3a23dc17b19
[21] Source: https://pure.vive.dk/ws/files/525484/1623_Pengespil_og_spilleproblemer_i_Danmark_2005_2016.pdf
[22] Source: https://static1.squarespace.com/static/527022b1e4b0112ec51855e0/t/5c8b59789140b753fd3e2b1c/1552636280587/Adf%C3%A6rdskodeks+Marts+2019+-+endelig.pdf

- Introduce time and spend limit messages (including landbased)
- Establish an industry body to deal with customer complaints
- Establish a follow-up review procedure (at least annually) to keep up with marketing changes and propose new/further standards of practice

Denmark's Code of Practice has not yet been implemented and so it is impossible to review its effectiveness. However, a number of important points can still be made.

First, Denmark's 2005 - 2016 study into participation and problem gambling reflects a broad pattern applicable in most countries. While rates of Problem Gambling remain relatively small, they are at best static and possibly increasing slightly on lower levels of participation. This means that the number of people that established questionnaire tests flag as having problems as a proportion of total gamblers is increasingly slightly. However, since the main reduction in participation is due to declines in lottery, where rates of problem gambling are typically low, it is important not to draw too much from this. Indeed, it can equally be stated that the enormous increase in participation in online gambling (with a concomitant impact on online products that can be linked with problems, as evidenced by the VIVE study) has not caused an enormous increase in problem gambling.

Second, Denmark is another example of a liberal and principles-based advertising framework causing too much advertising to be politically acceptable. In this instance, Danish operators, their trade association and the regulator has managed to establish a voluntary course of action ahead of legislative / regulatory change taking place. That the Code remains voluntary is clearly an important test of compliance that can be open to abuse, especially if a sufficiently robust agreement with TV stations is not forthcoming. However, it does demonstrate the willingness of a critical mass of commercial gambling licensees to accept advertising restrictions as a means of demonstrating social responsibility and likely also avoiding a regulatory change that would probably be worse than voluntary or self-regulatory restrictions.

Norway

Norway has organised its supply of gambling (including online) into monopolies, with no domestically available commercial licences. Its monopolies must follow advertising laws set out in the Lottery Act and the Gaming Schemes Act, as well as regulatory guidelines set by the Gambling Authority. The Norwegian Media Authority oversees general advertising and marketing standards.

The main provisions of these are[23]:

- The marketing of non-domestically licensed operators is prohibited from both an operator and a domestic media perspective as an accessory to unlawful gambling, but without clear offshore jurisdiction (see below)
- Advertising must not be direct at people under 18
- Must not suggest financial gain, increased social acceptance or increased happiness
- Must not be aggressive or intrusive (e.g. including restrictions on use of bright lights)
- Direct-to-consumer advertising requires prior consent
- Norwegian customers are informed when accessing sites that are not domestically regulated

While Norwegian laws and enforcement have had considerable success in preventing domestic mass market media participation in gambling advertising, success has been far less limited in stopping regular users from finding Point of Supply licensed operators. The Norwegian online gambling market therefore remains broadly comparable in per capita scale to more liberal Nordic markets (Norwegian online revenue per capita, ex monopolies: €67, vs. €89 for Sweden and €65 for Denmark; RP estimates triangulated from official and public market data). It should be noted that as well as restricting advertising, Norway also blocks domestic payments and access to Apple's app store. Norway's attempts to enforce its monopoly legislation, especially offshore to Maltese companies, is now the subject of a court case between the Gambling Authority and a subsidiary of Kindred.

The Norwegian Gambling Authority periodically surveys for problem gambling rates. The first survey, in 2003, found a 0.6% combined rate of problem and pathological gambling. In 2006, a survey conducted under different methodology found a past-year combined rate of 0.6 - 0.7% and a lifetime rate of 1.4%. In 2009, past year prevalence was again 0.7%.[24] In 2013, the PG prevalence was 0.6%. It can be seen, therefore, that the growth in online gambling has not led to a growth in measured problem gambling rates, albeit surveys are now relatively old and there has been material subsequent online gambling growth. However, it is reasonable to suppose, given the relatively early commercial development of Norway's online gambling market, that any significant pattern would have become apparent in the period 2003 – 2013.

The Norwegian Gambling Authority has recently completed an audit of gambling advertising in the country. The findings demonstrated that while the monopoly was showing restraint in the volume and nature of advertising it was undertaking, the overall level of marketing being conducted (including by .com businesses targeting Norway) is likely to grow the market. The report also highlights that further enforcement methods are coming, including tightening regulations around TV advertising.[25]

[23] Source: https://lottstift.no/wp-content/uploads/2015/09/Retningslinjer-for-markedsf%C3%B8ring-i-regi-av-Norsk-Tipping-og-Norsk-Rikstoto-nov-14.pdf
[24] Source: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5370365/
[25] Source: https://gamblingcompliance.com/premium-content/insights_analysis/more-ad-limits-store-foreign-operators-norway

Belgium

The main body of law dealing with commercial gambling in Belgium is the Gaming Act 1999. This does not specify any direct advertising restrictions other than prohibiting advertising for operators without a domestic licence. However, amendments in 2018 provide executive power (the King) to establish regulatory criteria for gambling licences across channels and set up advertising requirements. The Act has therefore become considerably more flexible and powerful in terms of regulatory authority (see below). Unusually in a European context, online gambling was regulated by Decree in 2010, which extended the landbased regime to online rather than creating a separate body of legislation; this contains some advertising restrictions but not many. One element novel to Belgium is that licensees must provide their advertising strategy to the regulator and the Gaming Commission can require a betting or online gaming commercial advertising campaign to stop.[26] In order to attempt to fill the regulatory-political gap, the Belgian Association of Gaming Operators has adopted a voluntary code, though its purpose is more to warn against too many restrictions favouring illegal sites than create a comprehensive voluntary marketing regulatory regime.[27]

The change in Belgian law last year was brought about from an initiative started by a Christian Democrat politician (Justice Minister Koen Geens) in 2017, who put forward a five-point restriction plan (no advertising during sports events; 8pm gambling advertising watershed; restrictions on the number of ads each operator can serve; including Social Responsibility messaging; tougher enforcement), which formed the basis of the new law (see below). Given the material rise in Belgian gambling advertising since regulation in 2010 (from a base of very limited advertising in a landbased context), Geens's initiative gained wide cross-party support (specifically comparing gambling to tobacco and alcohol).[28] The Belgian government was therefore one of the first to respond to a large scale increase in gambling advertising with a plan to restrict its use. The legal clarification provided was also welcomed by the regulator, which struggled to enforce under vaguely worded powers.[29]

The Royal Decree on Games of Chance (2018) strengthens and codifies gambling advertising restrictions in the following ways, though they have only just come into force (1 June 2019)[30]:

- Promoting games of chance limited to the website of the licence holder or opted-in personal messaging (i.e. no mass external marketing for gaming; still allowed for betting)
- Cannot encourage or target people under 21 (the age limit)
- Cannot use images or marketing techniques likely to appeal to minors
- Ensure fair and verifiable claims on chances of winning
- Cannot promote gambling as lifestyle or financially enhancing, or promote debt
- Cannot show sportsmen and women or clubs gambling
- Cannot use images of sporting events without the rights holder's permission
- Responsible gambling messages are required to be displayed ("Play with moderation!")
- Sportsbetting has an 8pm watershed and no advertising during sports events
- Advertisements cannot contain bonus offers

While now in force, it is possible that these measures will be challenged by some parts of the industry (especially gaming operators) arguing that they are not proportionate under EU law. Since the measures have only just come into force, it is not possible to assess their impact.

[26] Source: https://www.gamingcommission.be/opencms/opencms/jhksweb_en/law/
[27] Source: http://bago.be/reclame-essentieel-hulpmiddel-illegale-kansspelsites/
[28] Source: https://sbcnews.co.uk/europe/2017/06/19/belgium-cdv-party-seeks-harsh-measures-limiting-gambling-advertising/
[29] Source: http://www.finsmes.com/2018/09/belgium-toughens-up-on-gambling-advertising.html
[30] Source: http://www.ejustice.just.fgov.be/eli/arrete/2018/10/25/2018014587/moniteur

Italy
Italy was the first major European country to domestically regulate online gambling. This was done through a rolling programme of product authorisation starting with betting and poker in 2006. As one of the first to create a licensing regime, the legislation and regulatory framework was initially silent on advertising and marketing beyond some rudimentary restrictions to unauthorised advertising (not domestically licensed or offering products reserved to the state)[31].

However, a combination of regulatory-political pressure against gambling prevalence and the 'conviction politics' of the Five Star Movement has meant that a new law effectively banning all advertising (including substantially all forms of marketing and communication) was introduced in 2018, taking full effect in July 2019 (with new advertising and sponsorship contracts being prohibited from July 2018, which predictably caused a large number of extensions and new one-year deals). Indeed, despite the ban already being partly in force, detailed regulations on the specific requirements of the ban were not released until April 2019. The aims of the ban are to enhance broad consumer protection, gambling player protection and reduce gambling-related harm.

The key elements of this law and regulatory framework are[32]:

- A ban on all forms of advertising and marketing, both mass and personal
- A ban on product placement
- A ban on the distribution of branded merchandise or prizes
- A ban on editorial advertising
- A ban on the use of social media influencers to promote gambling

Exclusions which remain permitted are (only recently clarified)[33]:

- Signage, both in retail and for online logos etc (i.e. the brand of the company being used)
- Communications with the purpose of providing information for the customer
- Communications with the purpose of providing responsible gambling messaging
- Communications between or for businesses for commercial purposes

LeoVegas attempted to challenge the ban at CJEU level, but was referred back to the Italian courts in what is now established EU jurisprudence (i.e. that domestic courts must first hear complaints: they cannot be sent straight to the CJEU).

More broadly, problem gambling in Italy has not been effectively and systematically studied over a period to establish any cause and effect with regard to changes in gambling supply, demand and regulation. One recent study found that PG rates were relatively high in the adult population at c. 2%, but it is impossible to tell whether this is static, rising or falling as a rate on a like-for-like basis of study given the lack of systematic PG monitoring.[34] However, we can identify no reason to believe that the Italian experience would be materially different to other markets where data is more robust.

While already law, Italy's marketing ban has only just full effect. The partial ban in place does not seem to have slowed down market growth, according to statistics released by Agimeg[35].

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[31] Source: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1989-12-13;401
[32] Source: https://www.gazzettaufficiale.it/eli/id/2018/08/11/18G00122/sg
[33] Source: https://www.agcom.it/documents/10179/14467561/Allegato+26-4-2019/7e8dd234-9b83-4e2a-bc5a-f912bc6cdfa2?version=1.0
[34] Source: https://jgi.camh.net/index.php/jgi/article/download/3878/3960

[35] Source: e.g.: https://focusgn.com/online-casino-italy-growth

Spain

Spain is a federal country, with gambling legislation split between a national framework and regional powers. The regulation of gambling advertising is similarly split. Historically, both national and regional regimes have been silent on restricting gambling advertising (other than banning advertising for unauthorised supply and some protection of minors), allowing material growth (although national online operators require authorisation to advertise and engage in sponsorship deals)[36]. The national gambling regulator (DGOJ) even monitors and publishes advertising spend, which has grown by 21% pa since 2013 (the first full year of national online gambling being domestically regulated) to €216m in 2018, or 31% of online revenue, excluding €117m of customer bonuses issued (NB, likely excludes most regional-only spend). At the regulatory layer, the DGOJ issued a voluntary Code of Conduct in 2012, which was relatively light-touch but achieved broad licensee acceptance.[37] In line with other countries, the growth in online and advertising has not moved official problem gambling statistics, remaining static at 0.3% of the population in 2017-18, a similar rate to previous studies.[38]

At the regional level, a number of restrictions have emerged during 2019:

- Madrid region banned advertising on RadioTelevision Madrid[39]
- Basque region's main broadcaster (EITB) stopped gambling advertising, including digital[40]
- Catalan region's main broadcaster (TV3, Catalunia Radio) will not air gambling advertisements during children's TV programmes from 30 June 2019[41] (demonstrating the absence of existing regulation given that this was possible)

At the national level, pressure is increasing to address the lack of codification and introduce specific restrictions. A draft Royal Decree (from January 2018) would create a 10pm – 6am gambling watershed other than around live sports and also regulate bonuses, but this has not (yet?) been made law.[42] In October 2018 he left-wing party PSOE promised to ban gambling advertisements during live sports, but did not form a majority government. Populist party PODEMOS is also in favour of restricting gambling advertising. The Civic Ombudsman also called for national coordination of regional responses to gambling advertising in May 2019, including recommending a ban on commercial gambling advertising.

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[36] Source: https://www.boe.es/eli/es/l/2011/05/27/13/con

[37] Source: https://www.ordenacionjuego.es/cmis/browser?id=workspace://SpacesStore/04a0c263-e4fb-4917-87db-76c606c3bd26

[38] Source: http://www.pnsd.mscbs.gob.es/profesionales/sistemasInformacion/sistemaInformacion/pdf/EDADES_2017-2018_Resumen_(ampliado).pdf

[39] Source: https://www.azarplus.com/wp-content/uploads/2019/01/Propl-Emilio-Delgado-Juego-RTVM.pdf

[40] Source: https://europeangaming.eu/portal/latest-news/2019/05/06/44688/basque-broadcaster-eitb-bans-gambling-related-advertising/

[41] Source:

[42] Source: https://www.cnmc.es/sites/default/files/1908314_18.pdf

UK

The UK consolidated legislation for landbased and onshore online gambling in 2005, but only fully regulated online gambling in 2014. Gambling Act 2005 actually liberalised gambling advertising from a series of more restrictive 1960s Acts, with liberalisation coming into force in 2008. The key legislation relating to gambling advertising is Gambling Act 2005 and the Gambling (Licensing and Advertising Act) 2014. As well as these gambling-specific acts, general marketing (CAP) and broadcast advertising (BCAP) standards also apply, applied by the Advertising Standards Agency[43]. The Competition and Markets Authority is also mandated to examine general consumer protection and has reported on gambling fairness and transparency (particularly bonus T&Cs) in conjunction with the Gambling Commission[44]. Further, a significant body of regulatory practice is contained within Gambling Commission Licensing Conditions and Codes of Practice (LCCP), which are mandatory and binding to licensees.[45]

There have also been recent regulatory clarifications:

- Gambling Commission: 'reminder' advice on advertising and sponsorship requirements[46]
  - Avoiding targeting children, specifically in relation to football club websites
  - No gambling logos on football shirts designed for under 18s
  - Clear and transparent Terms and Conditions, especially for bonuses
  - Avoiding advertising that appeals to under 18s
  - Avoiding advertising that targets problem gamblers
  - Tougher enforcement action from October 2018
- CMA: advice on ensuring that bonuses (and their advertisement) are fair and not misleading[47]
- ASA: guidance to avoid advertising to minors[48]

The UK has historically taken a principles-based approach to gambling regulation and has therefore maintained a liberal advertising regime with few explicit restrictions (beyond a requirement for fairness and transparency, not to target minors) other than a watershed (9pm) except for live sports and bingo. This has led to a very large gambling advertising and marketing spend market, separately estimated by Regulus Partners as €1.7bn, split 96% online-led and 4% landbased-led.[49] Again, similar to other markets, this relatively recent acceleration in online marketing spend has not changed measured rates of Problem Gambling, which remain in the range of 0.6 – 0.9% of the population for over two decades.[50]

Nevertheless, the scale of gambling marketing, advertising particularly, has caused public and political disquiet. In order to attempt to head off this disquiet and potentially prevent political-regulatory action, a number of industry steps have been taken. First, the ABB (betting shop trade association) issued a responsible gambling code for its members in 2015, which (in terms of advertising) introduced responsible gambling messaging to shop window advertisements and stopped free bet promotions on TV prior to 9pm.[51]

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[43] Source: https://www.gamblingcommission.gov.uk/pdf/Guide-to-gambling-advertising-codes.pdf
[44] Source: https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/Social-responsibility/Joint-Competition-and-Markets-Authority-Gambling-Commission-letter-to-the-gambling-sector.aspx
[45] Source: https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/LCCP/Licence-conditions-and-codes-of-practice.aspx
[46] Source: https://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2018/Gambling-advertising-and-sponsorship-rules-reminder.aspx
[47] Source: https://www.gov.uk/government/publications/online-gambling-promotions-dos-and-donts/online-gambling-promotions-dos-and-donts-for-online-gambling-firms
[48] Source: https://www.asa.org.uk/resource/protecting-children-and-young-people-gambling-guidance.html
[49] Source: https://about.gambleaware.org/media/1857/2018-11-24-gambling-marketing-online-five-times-tv-ad-spend.pdf
[50] Source: https://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2016.pdf
[51] Source: http://abb.uk.com/wp-content/uploads/2015/10/Responsible-Gambling-Code-2015.pdf

Second, a broader trade association (IGRG) issued an advertising Code for members which incorporates social responsibility messaging into marketing and advertisements, and clarifies the workings of the TV watershed at 9pm (however, excluding traditional products such as bingo and sports sponsorship).[52] Third, operators via the IGRG have committed to TV advertising restrictions, supported by key broadcasters, which commit to a 'whistle to whistle' advertising ban to all televised sports which start before 9pm, implemented in July 2019 (excluding horseracing).[53] However, the CEO of one leading UK operator has already publicly stated that this should be increased to a full TV advertising ban for gambling around all live sports (excluding horseracing).[54]

UK gambling advertising has therefore undergone a period of 'tightening by reminder' during the second half of 2018, with more changes around live sports in the daytime occurring in the second half of 2019. These changes have not yet been sufficiently implemented to have a noticeable impact on the UK gambling advertising landscape, or consumer responses to it.

[52] Source: http://igrg.org.uk/wp/wp-content/uploads/2019/01/Gambling-Industry-Code-for-Socially-Responsible-Advertising-5th-Edition.pdf
[53] Source: https://www.rga.eu.com/igrg-announces-whistle-to-whistle-ban-on-gambling-advertising-around-live-sport/
[54] Source: https://www.dailymail.co.uk/news/article-6956769/Ban-gambling-adverts-televised-sport-not-just-football-urges-Britains-biggest-bookmaker.html

III. Advertising restrictions – efficacy

Academic research on the impact of gambling advertising is inconclusive on the efficacy of broad restrictions, but studies point to how advertising can be made safer. The enforcement of gambling advertising restrictions can be effective for the most visible elements given the media / technology supply chain, but this does not necessarily disrupt the black market significantly as less visible alternatives exist. This means that restricting advertising can adversely impact channelization.

While advertising restrictions have typically only just been implemented and are therefore difficult to assess in terms of impact, there has been a growing body of research literature on gambling advertising and its effects. In the absence of clear practical signals (and, in time, alongside it), this academic work can also provide a useful base for policy guidance, in our view.

Gambling advertising – the research literature

"There are indications that people believe that gambling ads affect gambling attitudes and intentions, but only little knowledge exists regarding the relation to actual gambling behaviors." Clemens et al (2017)

- Over the last decade-and-a-half, a body of research has developed on the effects of gambling advertising (and in particular its impact on problem gambling) – in western Europe, Australia, New Zealand and Canada.
- However, the majority of primary studies are based on qualitative feedback from consumers (including those with gambling disorder) and focus on awareness, attitudes and beliefs. There are no studies that we are aware of that assess behavioural responses to advertising.
- Context is critical when considering research into advertising. The more complex a market is (in terms of products offered and regulatory freedoms) the more difficult it is to isolate the effects of advertising on disordered gambling.

Advertising and gambling

Hanss (2015) found that advertising had a relatively weak influence on intentions to gamble: *"Participants, on average, felt their gambling attitudes, interests and behaviour were not strongly influenced by gambling advertising…Gambling advertising was not very familiar to the "average" gambler."* The study indicated that men are more likely to be influenced by advertising than women.

Advertising and problem gambling

"The impact of advertising on the prevalence of problem gambling is in general likely to be neither negligible nor considerable, but rather relatively small" Binde, 2014

- While research into the effects of gambling adverts on gambling behaviours is limited, there is a universal acceptance in the literature reviewed that adverts are likely to contribute to problem gambling and harms
- There is a wide variance of views on the extent of that effect – from those who consider impacts likely to be relatively modest to those who consider this an area of significant potential harm

Binde (2014) suggests five ways in which gambling adverts could contribute to disordered gambling:

1. Encouraging increased participation which then becomes problematic
2. Encouraging initiation in a form of gambling which quickly becomes problematic
3. Encouraging initiation in a form of gambling which becomes problematic over time
4. Undermining efforts to cut down or stop gambling once it has become problematic
5. Creating positive attitudes in society which may encourage vulnerable people to gamble

However, he found strong evidence for just one of them – undermining efforts to cut down or stop gambling*: "Of the five ways listed above in which gambling advertising hypothetically may contribute to problem gambling, there is direct evidence only for the fourth: advertising maintains or exacerbates already existing gambling problems."*

This view is supported by Derevensky (2010): "*Problem gamblers were more likely than social gamblers and non-gamblers to report that they sometimes or often gambled after seeing gambling advertisements and that advertising increased their interest in gambling. Furthermore problem gamblers were less likely than social and non-gamblers to report that they did not pay attention to gambling advertising."*

The Australian Productivity Commission's 2010 report on gambling also supports this view: "*Gambling advertising — which aims to stimulate demand… has the scope to undermine efforts to educate people about gambling."* (similar to point 4 above)

- While a large amount of research has focused on the fact of advertising (i.e. whether it is permitted or not), some researchers have studied whether there are specific risk factors in the nature of the advertising.

Hibai-Lopez-Gonzalez (2017) identifies three key risk factors in sports betting adverts in GB and Spain:

1. Trivialisation of risks related to gambling – often by the use of humour to downplay any suggestion that gambling may carry risks to health and welfare;
2. Promoting illusions of control and/or skill
3. Use of masculine themes – and male camaraderie - to position betting as a test of manhood.

In addition, Lopez-Gonzalez (2017a) identified a relatively high incidence of the depiction of alcohol consumption in betting adverts. Hing et al. has indicated that the interplay of gambling advertising and in-play betting may pose specific risks – particularly for those with high impulsivity.

Advertising and children

- Research on the effects of adverts on gambling behaviour by children is even more limited but most researchers acknowledge as a minimum that there are valid concerns in this area.
- In addition to concerns about the volume of advertising, researchers suggest that the nature of advertising may be a matter for concern with regard to children.

Researchers at Deakin University cite high rates of gambling brand and gambling advertising recall amongst children in Australia. They also contend that children in Australia are being taught how to bet (on mobile) through betting adverts; and that advertising is likely to glamorise and downplay the risks of gambling? They also argue that adverts position betting as a "normal" pastime amongst children – and that betting is a natural part of sport.

Pitt et al (2017) states: *"This study demonstrates that some children were able to recall specific strategies used within advertising messages and correctly link these strategies to specific brands…There were also elements within betting advertising that created a perception among some children that gambling was a normal or common activity for individuals to engage in. Consistent with other gambling research, these strategies were primarily linked to the perception that advertising portrayed gambling as easy, with a certainty of winning, and that betting was an integral part of friendships…There were specific promotional strategies used within advertising that reduced children's perceptions of the risks associated with betting."*

Hanss et al. (2015) indicated that the influence of gambling adverts may be sharpest amongst children and young people: *"Younger gamblers were more likely than older gamblers to report that advertising increased their gambling involvement…Being younger was associated with stronger perceived impacts but lower awareness of gambling advertising. This finding appears somewhat inconsistent. However, it may be that younger gamblers' responses were more an expression of their general beliefs about how much advertisements influence their everyday behaviours than a reflection of consciously experienced gambling advertising impacts."*

Derevensky (2009) found that adolescents may be particularly influenced by gambling ads - whether they are specifically targeted or not: *"Adolescents are attracted to the characteristics depicted in these ads; bright, flashy colours, excitement, glamour, and the potential for financial gain. Gambling is portrayed as a lifestyle; an entertaining social activity that results in a more rewarding, enriching and happier life. Some adolescents also expressed a dislike for gambling ads due to their ubiquitous prevalence on multiple media sources including television, radio, billboards, signage in convenience stores and on Internet pop-up messages…Advertisements that contain messages that gambling can lead to a happier lifestyle would almost certainly attract adolescents, often thought to be in a transitional developmental period between childhood and adulthood."*

A survey in Great Britain (carried out by the Gambling Commission) indicated that TV adverts are relatively effective at prompting gambling activity and that this may be most pronounced amongst 18-24 year-old males (the youngest age cohort included in the study). The survey also indicated that 11-16 year-olds had relatively high recall rates of TV adverts and 7% (9% of boys) claimed to have been prompted to bet by gambling adverts.

Research recommendations

- Most researchers recommend some form of government/regulator intervention – but this is context-specific and opinions vary from very light controls to possible ban.
- A number of researchers consider that tighter advertising restrictions are likely to have minimal impact on the incidence of harm.
- The interests of consumers at large (rather than simply "vulnerable individuals") ought to be weighed in the balance.

Williams et al (2012) rates restrictions on advertising as likely to be of "*moderately low effectiveness"* as a problem gambling prevention initiative. This is the same rating that is applied to voluntary self-exclusion, staff training and safer gambling education programmes. The authors suggest that it is too simplistic to make an assessment about advertising for gambling in general. The specifics are important: *"In general, the actual impact of advertising on consumer behaviour is complex and not well understood. What is clear is that the impact is dependent on many factors, including the quality and nature of the advertising, the nature of the product, the newness of the product to the marketplace, the nature of consumer, and the familiarity of the consumer with the type of product."*

They accept that advertising may have helped to make gambling more socially acceptable and therefore encouraged participation – but also remark that the growth of advertising has been accompanied by increasingly negative attitudes and has coincided with stable of falling problem gambling rates: *"Relatively little research exists on the effects of gambling advertising on gambling behaviour. It is reasonable to speculate that gambling advertising may have helped contribute to the positive attitudes toward gambling and increased participation in gambling when it was first widely introduced. However, despite continuous high levels of advertising, attitudes toward gambling are gradually becoming more negative and the prevalence of gambling and problem gambling is stable or decreasing in most Western jurisdictions".*

Hanss et al (2015) considers that there may be a case for greater restrictions – but it is far from clear cut: *"With regard to policy-making, the main finding is that certain groups of gamblers (young men, problem gamblers) feel particularly susceptible to gambling advertising. However, does such a finding justify political agendas to regulate, limit or ban gambling advertising? On the one hand, the question of whether advertising actually affects gambling participation has yet to be answered. On the other hand, knowing that perceived susceptibility is higher in vulnerable groups of gamblers, and assuming that perceived susceptibility can undermine gamblers' self-efficacy beliefs and discourage those who attempt to discontinue gambling, the present findings may advocate demands for stricter regulatory measures."*

Pitt et al (2017) calls for greater restrictions in order to better protect children*: "Governments should consider changes to regulations, along with evidence-based education campaigns, to counter the positive messages children are exposed to about sports betting, and to ensure children are not being educated about how to gamble through marketing campaigns."*

Research conclusions

Research around gambling advertising is largely based upon analysis of self-report awareness and attitudes rather than actual behaviour. The indication is that there are harmful effects arising from gambling advertising. However, these are likely to be lower order effects compared with the actual provision of gambling (structural characteristics of products, accessibility). The strongest evidence of harm relates to the role of advertising in undermining resolve to cut down or stop gambling. However, Isolating the impact of advertising from other aspects of the gambling market is very difficult.

The relationship between the extent of gambling advertising and problem gambling and youth gambling is extremely weak. Research into the effects of gambling advertising on children is patchy and even more inconclusive. While we should be cautious where children are concerned, there is an absence of string evidence in relation to advertising and harm to children.

In recent years, there have been a number of studies on the nature of betting adverts. These suggest relatively simple opportunities to address specific concerns about the adverts – not trivialising risks; not promoting illusions of skill/control; reducing the level of machismo in advertising. These may be difficult to regulate at the legislative layer but could be pursued through evolving and enforceable codes of practice within the regulatory layer.

Practical considerations: applying lessons on advertising restrictions

Who should be permitted to advertise?
Restrict the permission to advertise to domestically licensed operators. This is now the case in a growing number of jurisdictions, including Great Britain, Spain and Sweden.

How should regulation be structured?
Advertising and sponsorship involve sometimes complex supply chains (e.g. media companies, internet service providers, consumer technology companies) and some processes don't directly involve the licensee. The key elements should be involved as the regulator develops policy - licensees, media companies, rights-holders (e.g. sports clubs; sports bodies), kit manufacturers, other relevant regulatory bodies.

All forms of marketing and advertising should be covered by regulation and self-regulation such that there is always a responsible and accountable party for any form of advertising. For example, in Great Britain, the Gambling Commission has made it clear that licensees are liable for the activities of affiliates marketing on their behalf.

Examine relevant existing legislation to identify gambling-specific issues and gaps; then assess whether gaps are best addressed through regulation or self-regulation (this has not been done systematically in the examined countries because the advertising restrictions have tended to be a reaction to increased advertising, not an initial opportunity to control advertising through coherent domestic legislation and regulation: indeed, even Sweden, which as only just regulated, is having to tighten its advertising regime post regulation).

Develop a coherent system of inter-regulator coordination (i.e. media, telecoms and other stakeholders as well as gambling) to ensure effective policing of gambling advertising. The regulator may wish to adopt specific powers itself (as in Great Britain) for oversight and enforcement.

Establish clear lines of responsibility and modes of cooperation with other relevant regulators. The 2017 agreement between New Jersey and Australia is an example of how a regulator in one jurisdiction may deter transgressions in another.

Ensure that self-regulation is underpinned by a transparent system of adjudication and robust enforcement. Recently, the Swedish Gambling Authority has taken action against a number of operators for failing to adhere to advertising rules (with weighty first-time financial penalties); while in Great Britain, the Gambling Commission took on new powers to oversee licensee marketing practices[55].

Establish criteria for assessing the effects (and policy success) of the advertising regulations; and put in place a credible, independent system to collect data and analyse impacts. Again, this tends to be lacking in the regimes analysed because the restrictions are a reaction at the political level, not a preventative measure at the regulatory level.

Regulations should avoid elements which skew marketing and advertising behaviour to certain periods (e.g. 'whistle to whistle' in sports potentially encourages a pre-match spike; sign-on only bonusses incentivises an advertising spike on launch – as seen in Sweden).

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[55] In the past, critics have complained that Britain's advertising watchdog, the Advertising Standards Authority has failed to deliver meaningful sanctions in relation to breaches by gambling companies

What should be restricted?

Gambling advertising should not be targeted at those below the legal age to gamble (as in Belgium, Great Britain, Norway, Spain, Sweden and others).

No direct marketing should be permitted to individuals who have elected self-exclusion (and where the operators has been notified of this) – as in Great Britain and Sweden.

Gambling advertisements should not seek to glamorise gambling; encourage unrealistic expectations of winning; or suggest that gambling is linked to success in life (financial, sexual etc), as in most jurisdictions assessed.

Reasonable steps should be taken to ensure that children are not exposed to large amounts of advertising for gambling services (for example where a significant proportion of the audience is under the age of 18 years), for example by restricting media access to content, channels or programmes aimed at children (or, in a stricter environment, with high proportions of children viewers); restricting social media messaging and account access to 18+; ensuring age verification prior to joining any mailing lists or notification systems.

Athletes below the legal age to gamble should not be used within gambling advertisements; and gambling endorsements should be banned within youth sports.

Replica sports kits should not carry gambling endorsements in youth sizes (as in Denmark, Great Britain and Sweden) and consideration should be given to ensuring that non-gambling replica kit options are made available in non-youth sizes (as children may outgrow youth sizes).

What should be encouraged?

Gambling advertisements should include reference to the fact that there are financial and well-being risks involved. This may be achieved via 'health warnings' (as in Belgium and Denmark).

Explore opportunities for using advertising to encourage moderation - through codes of practice built on positive behaviours rather than simply warnings and reductive aims. This approach has been pioneered in a number of Canadian provinces (where control of gambling by Crown Corporations ensures a proximity between licensee and regulator).

Terms and conditions should be presented in a clear fashion; where there are significant qualifiers to services being advertised, these should be included prominently within the advert (as in Great Britain).

Build in efforts to empower consumers (rather than taking decisions on their behalf) - ad blocking for example will be available on Sky TV to viewers in Great Britain from June 2020. This will allow Sky customers to block gambling adverts.

Practical considerations: enforcement
One of the most obvious issues of advertising restrictions is whether or not they can be enforced. Given that the more structured advertising restrictions that are now being brought in across jurisdictions are either very recent or not yet (fully) implemented, practical lessons on enforcement are not yet clear. However, we can make seven broad points supported by the evidence of marketing development and logic:

First, the forms of advertising which require the cooperation of major media companies, consumer technology business and/or sports stakeholders are the easiest to successfully restrict. This is because there is a domestic counterparty that will wish to avoid both legal liability and reputational risk of breaking gambling regulations.

Second, an increasing amount of marketing power and importance is in the hands of social media networks, consumer technology companies and internet services providers. These tend to be global businesses that have historically taken a 'light touch' to most forms of regulation (arguably part of a West Coast US culture of individualism and entrepreneurialism). However, this is changing both in general and specifically in terms of gambling. Laws and regulations fit for twenty-first century advertising practices need to factor in these stakeholders and how they are used in order to be effective (i.e. social media and consumer technology companies as well as broadcast and print media companies need to be considered in terms of capture, regulatory guidance and/or enforcement).

Third, while some affiliates are large and/or compliant businesses, many have not had this as a core competence and many are outside the jurisdictional reach of domestic legislation (based offshore). Consequently, affiliates can be very difficult to monitor and control. Some form of affiliate registration and regulation, with compliance responsibility falling on licensed operators would therefore be logical.

Fourth, while 'self-regulation' appears to offer promise in certain markets, it has been a perceived failure in others. Moreover, self-regulation can by its nature be avoided, meaning that it is only as powerful as its reach. Typically, therefore where self-regulation has a critical mass of key suppliers on board (e.g. TV broadcasters, ISPs) it is much more likely to succeed than if only a collection of operators. Self-regulation has the clear benefit of engaging stakeholders and coming up with working responses and so has clear merit; however, in environments where some operators and/or media companies can ignore the requirements (i.e. they are not binding), then self-regulation cannot replace imposed regulation. Self-regulation may provide the starting point for subsequent regulation.

Fifth, advertising bans which start too broad or simplistic (e.g. Italy) can be chaotic for licensees to adapt to and have unintended consequences (e.g. preventing social responsibility messaging).

Sixth, online gambling has faced an absence of regulation or restrictive regulations for much of its history – and this framework remains the case in large parts of the world. Consequently, online gambling businesses have the tools to circumvent regulation if they are so minded, so long as they do not need the cooperation of businesses that are unwilling to assist (i.e. most forms of advertising). Therefore, a complete advertising ban puts more emphasis on direct marketing, affiliates and novel methods of reaching the customer. This in turn levels the playing-field somewhat between licensed operators and illegal supply. This is a critical issue of 'channelisation' or ensuring that as much demand as possible is put through regulated rather than illegal supply, which we discuss below.

Finally, laws and regulations need to be clear and explicit in both their ends and means, or risk a combination of unintended consequences (e.g. preventing responsible gambling messaging) and work-arounds (e.g. no advertising during a sports event, but a big spike immediately before and after).

Practical considerations: channelling

A logical goal of effective gambling regulation is to ensure that as much demand is channelled through domestically regulated supply as possible, rather than the black market. This maximises the efficacy of compliance and social responsibility measures in place as well as tax revenues.

It can be seen from the description and analysis above that the online gambling market has been very good at circumventing advertising restrictions that exist in markets without domestic regulation, especially through the use of affiliates. These tools will remain available to black market operators in the Netherlands with the onset of domestic regulation.

A key area in which black market operators struggle to compete with domestically licensed operators is in the use of advertising. This is because by making it unlawful to accept advertising from operators which are not domestically licenced (standard within most gambling legislation), mainstream media companies and other key stakeholders will not accept black market business. Equally, the increased visibility that black market operators attract by attempting to advertise aids enforcement in a regulatory regime functioning effectively (monitoring, whistle blowing etc). Similarly, as markets mature, advertising is a key way for gambling businesses to reach mass market consumers and not just the regular users which seek out gambling supply.

However, advertising is only one component of channelization and it is important to put this component into context to discuss its relative strengths. There are five key areas that affect channelization from a customer engagement and revenue capture standpoint; further given the split between occasional user / mass market (most customers, minority of revenue) and regular user / VIP (low number of customers, most revenue), it is important to understand distinctions of impact between volume and value.

First, customer choice. As explained above, while many mass market customers may have only one or two gambling accounts, regular users typically have more than five and often more than 10. Consequently, any regulatory regime which reduces supply either quantitatively (e.g. number of available licences) or qualitatively (i.e. available licensees are weak operators, for example domestic companies only with no real online expertise) will encourage regular users to seek supply in the black market. The impact of this depends upon the nature of the restrictions, however, it would be worth flagging that at an extreme, a monopoly is likely to capture only a maximum of c. 40% of a market. This can be seen in the attempted monopoly protection in Nordic markets, where in Finland and Norway, protected monopolies account for only 19% and 35% market share respectively (RP estimates, excludes online lottery revenue).

Second, fiscal-regulatory impact on product. Another area critical to channelization is product availability. While there are a number of variations, European online commercial gambling broadly breaks down into: 45% betting, of which c. 70% is in-play and c. 20% on 'tail' sports and events (e.g. lower league sports, exotic bets, politics etc); 55% gaming, of which c. 65% is slots and c. 5% poker, with the rest a mix of live and computer generated ('RNG') table games. Limitations to any of these products can create substitution (e.g. the French poker market is very large: more double the size of UK, largely because other forms of gaming are banned), while mass market customers are also on the whole likely to gamble on what is available (hence strong growth in France). However, regular users will seek out the products that they know and like. Consequently, and by way of example, banning in-play is likely to create a c. 20% direct black market (i.e. 20% of the total betting market migrating to illegal supply), while banning slots is likely to create a c. 30% black market.

Moreover, once a regular user has access to black market supply (by setting up accounts), it is likely that those users will move increasing amounts of their overall activity to the black market for convenience – i.e. including on product which is domestically regulated (e.g. bet upon a product not available, win, spend winnings on a product that is domestically available but with the black market operator, compounding the cost of the product restriction from a channelling perspective). Product bans alone can therefore create black markets worth more than domestic supply (i.e. channelization is less than 50%).

Third, fiscal-regulatory impact on price. While many users are not price sensitive, a material cohort of regular users is. Consequently, any rules or taxes (turnover-based, winnings based) which limit pay-outs give a significant price advantage to black market operators. A similar dynamic can operate in gaming with the provision of bonuses and offers. Both price and offers are a very visible and very effective point of differentiation if they are materially restricted for domestically regulated operators . We would estimate that price sensitive customers typically represent c. 40% of an immature market in revenue terms, falling to c. 20-30% in a more mature market (NB, largely overlapping with the product-sensitive cohort above). Severe restrictions to price and/or offers could see substantially all of this revenue currently existing in the grey market moving to a black market rather than regulated.

Fourth, enforcement measures, while never completely effective can still be important. It is beyond the scope of this paper to review these in detail, but the cumulative impact of measures such as payments blocking, IP blocking, enforcement though Internet Servie Providers etc is to mean only the most determined regular users will persist with black market sites. However, while the cumulative impact of effective enforcement can have the ability to reduce the scale of the black market (RP estimates by up to 70%), this is not the same as channelization: gambling activity will likely not occur at all if there is no domestically regulated supply combined with effective enforcement.

Fifth, relative visibility and accessibility of legal vs. illegal supply. This is to an extent an element of enforcement. Broadly speaking, the more accessible illegal supply is, the bigger it will be, either at the expense of domestically regulated supply (direct channelization) or creating additional demand (e.g. by creating a mass market). If advertising is banned for all operators, domestically regulated supply loses the ability to create a mass market as well as diminishing its ability to reach regular users. A ban on advertising therefore helps to level the playing field between illegal and domestically regulated supply. Its impact is likely to be secondary in channelization terms to the issues discussed above. However, its impact (while unquantifiable) is still likely to be material, in our view.

In terms of whether or not domestic licensing is effective in channelling can probably be best seen by the number of licensees attracted. Relatively liberal licensing jurisdictions (e.g. UK, Spain, Denmark, Sweden, Italy) tend to have c. 50-150 licensees, demonstrating high levels of operator engagement and consumer choice. However, more restricted regimes (e.g. France, Poland, Portugal), tend to have fewer than 50 licensees (sometimes far fewer), restricting global operator engagement and consumer choice. The very fact that such small numbers of operators are engaged in a market points to a high black market, in our view (while many operators without a domestic licence will attempt to block illegal play, not all will and some customers/operators will be determined to find workarounds). In summary therefore, there is a direct correlation between how liberal a regime is and the number of licensees it attracts. There is then a logical, if less easy to prove, correlation between the number of licensees and the volume of demand channelled into domestically regulated supply. Licensees with a high market share are visible and with much to lose from not getting a licence and/or non-compliance, so capture and enforcement here tends to be effective; the issue is the ability to capture the many smaller operators which also form the secondary accounts of regular users (and so advertising is less important – see above) and can therefore form the basis of a black market if not regulated.

Moving back to the specific subject of advertising, banning or heavily restricting advertising therefore can potentially have a serious negative consequence on channelization for three reasons:

1. It removes a key differentiator for legitimate, domestically regulated supply to be able to compete more effectively against a still-present black market by allowing the domestically regulated supply to be far more visible to the public: this will have an effect on the gambling choices of regular uses, but especially occasional and mass market users

2. It increases market focus on regular users which are more likely to seek or find black market supply (because mass market users are less likely to engage without visible advertising)

3. It increases the importance of elements of the gambling supply chain less likely to be compliant than major media and consumer technology companies (for example)

However, these drivers are difficult to test with evidence because of the forward nature of most advertising bans. However, the history and practice of the current market demonstrates a level of resourcefulness that should give strong merit to these drivers being significant in terms of market impact, especially if combined with other restrictive practices that can affect channelling outlined above.

Summary of the key political objective: reducing large amounts of gambling advertising

One of the key underlying objectives of all of the legislative and regulatory changes examined is the reduction of large amounts of gambling advertising. Indeed, the presence of large amounts of gambling advertising has been the major catalyst for bringing about the changes analysed. While the restrictions are all too new to monitor and analyse their success (or otherwise), we can make four general observations on this point which would apply to any market framework:

- Self-regulation can be effective, but only if it captures both a critical mass of operators and, crucially, the media companies also (to restrict supply as well as demand): otherwise the restraint of some operators will be counterbalanced by the increased spend of others; further this can only work where there is high levels of consolidation within the media in question (for example TV, mainstream radio, social media; not print media or direct online advertising)

- Creating restrictions too narrowly defined around specific events (e.g. only during sporting events) is likely to create a significant increase in advertising around the restrictions; therefore restrictions need to be broad in scope and explicitly consider ‘unintended consequences’ and workarounds

- Creating restrictions which only concentrate on one form of media (e.g. TV or sponsorship) is likely to have the effect of pushing advertising into other forms of media (e.g. social media), so restrictions need to be both future proof (to new advertising media) and regularly reviewed

- Basing restrictions on poorly defined outcomes or instructions (e.g. ‘moderate’ advertising) is likely to fail in the first instance as operators fail to understand practical implications; while court cases and fines are likely to establish a ‘best practice’ over time, setting this best practice in clear guidelines would have a more immediate and less confrontational benefit

APPENDIX – academic research bibliography

Bold = directly related to the question of advertising, otherwise relevant general/ behavioural research

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